The Journal of
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Introduction, *Special Issue* 'Development, Democracy and Culture'

Edited by John Clammer and Jonathan Vickery

Article Information

Abstract

In a time of huge religious, political and territorial conflict, the *cultural* dimension of development is all too easily ignored. The last special issue of the *Journal of Law, Social Justice and Global Development* was concerned with Cultural Rights (culture and human rights); this current issue, thematically, follows from a question that emerged in the process of its editing: How have global cultural policies been conceived as development policies through a quest for the 'ideal' of democracy? The 2001 UNESCO *Universal Declaration on Cultural Diversity*, and then the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, appealed to the values of democracy as a 'basis' of their operational efficacy. But what kind of democracy is most effective in the implementation of cultural policies, and how that that re-adjust our thinking on the role of culture in development? What happened to the discourse on *democracy and development* that featured milestone texts like the World Commission on Culture and Development's *Our Creative Diversity* (1966)? What happened to the notion that cultural pluralism was a road to democratisation, and why do policies on multiculturalism no longer seem to promise a vibrant participatory "culture" of democracy for the brave new "globalised" world? These questions cannot be decisively answered, but the articles in this issue serve to frame our investigation moving forward to a substantive response.

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Of the several academic events and intellectual encounters that were responsible for the theme of this special issue, we will only name one, where John Clammer was a visiting international fellow at the Warwick University Institute of Advanced Study during the summer of 2018. It was during this time we collaborated on many seminars, some of which were generously sponsored by the Warwick Research Priority in International Development (now the Warwick Institute of Interdisciplinary Research in International Development, the prime sponsor of this journal). One of the sponsored seminars concerned the continued significance of UNESCO's discourse on 'Culture and Development'. It discussed how that discourse (principally, on the relation between culture, democratisation and development) continues, but, has become of secondary importance to the principle subject of the UN 2005 Convention — diversity and intercultural relations through creative economy and its spectrum of supporting policies.

While the 2005 Convention had its origins in the admirable political motivation (largely on the part of France and Canada) to protect cultural production from the increasingly liberalised global economy, it nonetheless contributed to a re-framing of global cultural policy with reference to the UNCTAD-devised [United Nations Conference on Trade and Development] framework of Creative Economy. While it would be wrong to assert that culture and development policies were henceforth displaced by more specific policy aspirations for the creative industries — indeed, the 2005 Convention foregrounds interculturalism and international cooperation — it does mean that the growing recognition of the interrelation of culture and democracy is no longer central to UNESCO (as it was at the time of the Convention's origins in the 2001 UNESCO *Declaration on Cultural Diversity*). Indeed, it is no longer central to the many strategic international cultural relations organisations (like the British Council), to NGOs, to city authorities (such as Creative City projects), or to the UNDP (United Nations Development Project). And this has many implications, notably for the stunted intellectual project of 'pluralism' (central to UNESCO's

landmark 1996 Report of the World Commission on Culture and Development (now dissolved), *Our Creative Diversity*; the 1999 publication of *Towards a Constructive Pluralism* (UNESCO, 1999), and Boutros Boutros-Ghali's edited book-length report *The Interaction between Democracy and Development* (UNESCO, 2002)). A primary implication, we would argue, is the decreasing international profile of cultural policy itself — as a necessary component of any socially-informed and sustainable approach to development. Cultural policies have tended to become supplementary to creative industries, economy or urban development policies. This, unfortunately, lessens the urgency of the recognition of *rights* in the realm of culture, the capacity for inclusion and the cultivation of citizenship, along with political participation (of promoting the civic order and association, and of the quality of urban and public cultural life). Cultural policy, as a political enterprise, maintain a broader historical claim on the public realm and social life, which are arguably not intrinsic to economic or urban policies. Indeed, it is surely possible to implement most of the 2005 Convention without being troubled by the question of democracy itself, or the intrinsic role human freedom and expression in democratic life.

This Special Issue has, implicit within it, an aim to promote what one may refer to as a 'democratic culture', or a quality of cultural life (production, management, policy framing) that articulates the necessary conditions for both self and collective actualisation (or, in terms of a pluralist theory of democracy, the actualisation of the self through collective self-determination). The papers of this special issue are thus both broad-based and focused: they span cultural policy, sustainable development, creative economy, creative cities, contemporary art, civil society and cultural rights. When we invited the various contributors, we did so because of the way that each of their very different approaches to cultural research nonetheless encircled critical issues internal to the problem of democracy. And we define democracy as a problem, and not simply an object of analysis, a theory of government, or a self-evident and ethically superior way of organising society. As we have witnessed in the UK, throughout Europe and

the world, the rise of populists claiming to represent the authentic will of the people, has thrown into some disarray established and normative notions on democracy we have taken for granted (indeed, since the post-Second World War settlement that saw the rise of the UN system and its institutions).

The word 'democracy' naturally conjures up images of the ballot box, and of the relatively representative political forms and institutions of Western Europe, North America, Australasia, Japan and other societies that have followed a basically liberal model of governance such as India. The concept tends, in other words, to be read as a broad political one, without much reference to either its sociological or cultural underpinnings, expressions and manifestations. India, which likes to bill itself as 'the world's largest democracy', does indeed have the institutional forms of that political system – regular elections, a bicameral parliament, state assemblies and forms of democratic participation penetrating down to the lowest level of political organization – the panchayat or village level assemblies. In practice, however, this ideal-type model is distorted by factors of caste, communalism (often religiously based), regionalism (for example in Kashmir and in many parts of the Northeast of the country, which barely consider themselves to be part of India at all. A similar argument could be made of other formally democratic political systems – Japan for example, or Singapore, where local and cultural readings of 'democracy' take on a distinctive style. But while the term itself is open to a variety of interpretations, the notion of democracy is nevertheless held up as the best of all political arrangements, and certainly a great advance on feudal, monarchical, authoritarian or totalitarian alternatives. One profound reason for this is its association with human rights: the belief, which substantial empirical evidence supports, that it is only within the context of a democratic (and hopefully responsible, transparent and representative) regime, that human rights can be protected and realized.

But at the same time, a growing chorus of voices have been suggesting that none of our existing political systems is actually effective either in delivering those promised goods to all citizens (or non-citizens for that matter) or incorporating all the members of society, including ethnic and religious minorities, into a genuinely representative and egalitarian polity, or in addressing the all too apparent global issues that are pressing upon us regardless of nationality: global warming and climate change, conflicts and terrorism, pollution of the air and oceans, dangerous loss of biodiversity, and other issues that threaten the viability of life on Earth as a whole. Assuming that we have the intellectual and moral resources to address these problems, factors which must be expressed in political terms eventually, and that we can avoid the apocalypse if we have the will to do so, then the question of the relationships between democracy and what is conventionally called 'development' must necessarily arise.

There are here in fact a number of key issues. One of these is the rethinking of the concept of democracy itself and questioning whether the simple 'ballot box' model is what we need, or whether alternative forms of democratic life (quite possibly at very local as well as national levels) can be conceived that emphasize the very values on which original conceptions of democracy were based: the old values of liberty, equality and fraternity, together with genuine participation, the cultivation and protection of human rights, and, many would now argue, of the rights of nature and non-human species, and a broad conception of responsibilities rather than a culture of entitlements. Implicit in such a model of what might be thought of as 'genuine' democracy, necessarily participatory and in which all voices are heard, are questions of culture. Let us unpack this as it provides one of the key frames through which this special issue is organised.

We are familiar with the idea of 'political culture' – essentially the idea that any political form, however much it may represent itself as an example of an ideal-type that can even be represented in a diagram of the kind often used to show organizational structures in a graphic form – is in fact animated by cultural and sociological factors peculiar to its geographical and historical situation. Indeed, political sociology is largely

concerned with the discovery and elucidation of such factors. This is not unimportant – there are many local variations on the basic model of democracy, which very much influence the way it is practiced in reality. But it certainly does not exhaust the multiple relationships between culture and democracy, or of the even larger triangulation of culture, development and democracy, and these demand an elaboration in more detail.

Something of a 'chicken and egg' situation appears to obtain here. Or to put it in slightly less informal language, there is a complex linkage between the three terms. Democracy should ideally promote not only human rights, but also the flourishing of culture. The evidence on this, however, is mixed. In many democratic polities, the arts are under threat, not from some totalitarian fear of free expression, but by cuts to funding and public budgets. In the UK for example this is not only true of financial support for the arts in general, but is very conspicuous in savage cuts to library funding, many libraries having closed, been merged or taken over by voluntary workers in order to keep them open at all. Paradoxically, the glories of urban Vienna stem not from a benign democratic regime, but from the rather chaotic authoritarianism of the Hapsburg monarchy, which, for all its anti-democratic impulses, certainly encouraged good architecture, music and opera, and provided a remarkable environment for the flourishing of the visual arts. Contemporary Germany however, in both its eastern and western parts and their rather separate histories in the last half-century, has high levels of spending on the arts, and it is rare to find even a small German city without its university, orchestra and at least one public art gallery.

UNESCO has long been promoting the preservation and protection of culture and the maintaining of cultural diversity from the threats of globalisation, and, although it does not like to use the term, from the homogensing tendencies of international neoliberal capitalism (for which presumably read 'globalisation' in UNESCO-speak). The major declarations of the early years of the current century, and in particular the 2001 *Universal Declaration on Cultural* Diversity (UNESCO 2001) and the subsequent expanded *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (UNESCO 2005), both of which link the preservation of culture to globalisation on the one hand, and equable development on the other (for a detailed commentary on the 2005 Convention see De Beukelaer, Pyykkönen and Singh 2015). In between, during the reign of Boutros Boutros-Ghali as Secretary-General of the United Nations, they also published his text *The Interaction Between Democracy and Development* (2002). In fact, quite a substantial book could be written on the numerous declarations of UNESCO, not only on the general principle of cultural preservation and presumably its encouragement, but also on specialised issues such as intangible cultural heritage, the creation of recognised sites of cultural importance, underwater heritage in the form of submerged archaeological sites and historically important ship wrecks, and more. Indefatigable in the issuing of declarations, the problem (other than UNESCOs rather fuzzy definitions of culture) is in persuading governments to actually abide by them and to carry into practice pro-active policies of cultural advancement. UNESCO itself has recognised the link between culture and development in its documentation and promotion of culture as a mechanism of poverty alleviation and economic uplift, as well as culture's intrinsic value (UNESCO/UNDP 2013).

It is certainly true that the promotion and protection of cultural diversity *is itself a form of* democracy – the encouraging of pluralism and multiple voices expressing themselves freely through a large range of cultural expressions. In the past at least, this optimistic view was often expressed by the concept of 'multiculturalism', a subject on which a vast amount of scholarly ink and political rhetoric has been expended. While some countries – Singapore being a conspicuous example (Chan and Siddique 2019) – have actively maintained the concept as an organising principle of their polity and society, many others have effectively withdrawn, as evidenced by the rise of populism in once-liberal Europe and elsewhere and often taking the form of anti-immigrant and anti-religious minorities sentiment. Cultural

democracy then is expressed in the form of cultural pluralism and freedom of expression. The link between cultural democracy and political democracy however is complex and the two are not necessarily related in any simple causal sense. Nor necessarily is the link between democracy and development. Indeed, as we have just cited Singapore as an example, the late and long-time prime minister of that country, Lee Kwan Yew, quite openly stated on a visit to the Philippines – a country with a lively if often contested sense of democracy and a very free press – that authoritarianism of the (then) Singapore variety was much better at promoting *development* than the open political system of his host (quite overlooking the very different histories and the rural nature of the Philippines and its strongly religious culture).

There are then no clear-cut answers to the questions of the relationships between culture, democracy and development. If this is a moving target, nevertheless the very nature of that fluidity pushes to the forefront of debate a number of key questions, some of which are addressed in this special number. Some are given more prominence than others, but a brief manifesto of these issues can certainly be set out, and this we will now endeavour to do.

If the nature of democracy, at least in its 'purer' forms, is linked to the question of human rights in a positive sense (democracy creates the context for human rights to be respected), the whole cultural diversity debate inevitably raises the question of cultural rights as an expression of genuine freedom to create and live whatever alternative lifestyles are desired (within the limits of the law, itself arrived at through debate and consensus). Such rights are rarely discussed in the context of human rights. Yvonne Donders has 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' (Donders 2015: 117). Such a definition relates quite naturally to the idea of cultural justice: the active enhancement and inviolable nature of cultural expressions and their embodiment in chosen

lifestyles, including in modes of relationship to nature (for an expanded discussion see Clammer, 2019). An important aspect of social justice is then freedom of cultural expression. This may relate to development in the more conventional approach taken by UNESCO and the UN Development Program in their promotion of cultural enterprises as vehicles for development (UNESCO/UNDP 2013), or in a much broader and imaginative way as defining the good life, the desired future and the freedom of artistic expression.

The triangulation of democracy, culture and development throws up many other issues – both descriptive and prescriptive ones. On the descriptive front, the matters around which this special issue are organised include democratising cultural policy and making of cultural resources available to large sections of the population, the relationships between cultural rights and human rights, the actual impact (if any) of the various UNESCO conventions and treaties on culture, and, in an environment where the term 'sustainability' has become a buzzword, the question of sustainable cultures, in the two senses of, one the one hand, contributing to other forms of environmental and economic sustainability (through the curbing of consumption or excess travel for example), and the encouragement of forms of culture which themselves can be sustained over long periods of time rather than as the fragmented and ephemeral forms of cultural production that are currently very prevalent.

At a prescriptive level, questions arise of how to guide cultural policy in the direction of greater democracy, participation and activity that contributes more effectively to the constructive role of the arts in addressing a range of issues, including the environmental and the political. Shannon Jackson has argued very effectively that 'When a political art discourse too often celebrates social disruption at the expense of social coordination, we lose a more complex sense of how art practices contribute to inter-dependent social imagining. Whether cast in aesthetic or social terms, freedom and expression are not opposed to obligation and care, but in fact depend upon each other' (Jackson 2011: 14). Somewhere in between the descriptive and the prescriptive, then, comes the identification of

areas of cultural studies that have for various reasons been occluded. While religious studies as a field flourishes within its own discursive space, the links between religion, cultural studies and development have not been explored in anything like enough detail. As Ashcroft, Griffiths and Tiffin point out in their seminal study of postcolonial literature, the sacred in a world dominated by secularity, economic rationalism and progressivism has been relegated in many cases to the category of what Homi Bhabha (1994: 114) has called 'denied knowledges', while in fact it is related not only to the rise of fundamentalism, terrorism and other socially regressive manifestations, but equally 'debates about the sacred have become more urgent as issues such as land rights and rights to sacred beliefs and practices have begun to grow in importance' (Ashcroft, Griffiths and Tiffin 1989/2007: 212).

It might be argued, of course, that any just and sustainable process of development *must* be democratic, in the sense that people are consulted and their real and self-defined needs are addressed (and not just as some top-down plan conceived by outsiders sitting in offices in the World Bank or some major development agency). The proliferation of civil society organisations and the growth of the third sector illustrates the fact that in many cases it is not the state that acts in the people's interests, but those who find themselves forced or encouraged to take a stand on particular issues not addressed or addressed in inappropriate ways by governments and other formal (including development and aid) institutions. Furthermore, we would certainly argue, that at the core of any acceptable process of development has to be social justice — a situation in which human rights, cultural rights and the rights of nature are fully taken into account. This too, in a world where new issues are constantly being thrown up or intensified – the impact of globalisation on local cultures, migration, whether voluntary or forced by political and/or environmental factors, ageing societies in Japan, much of Europe, Singapore and elsewhere, digitalization and the so-called 'new economy' with its multiple implications for work, employment and access, especially for the technologically deprived.

At the same time, debates continue about the universality of human rights, or the extent to which they may be rooted in culture, and hence contextualised rather than applying in a blanket way to all societies (An-Naim 1992, Bell, Nathan and Peleg 2001, Cowan, Dembour and Wilson 2001). An aspect of this debate is the question of the validity of indigenous forms of justice and rights-setting, such as the Adat customary law of Indonesia and Malaysia, or the status of Hindu law in India. In these and other similar cases more 'universal' conceptions of law and legal process have tended to drive out the long-established local varieties and, where they still exist have largely confined them to such areas as family law and local disputes. The existence and integrity of such systems also needs to be situated within debates about sustainable justice, democracy and development. It is of course also all-too possible to abuse such a position, and to argue as has been the case in a number of countries, that certain rights, even those enshrined in the Universal Declaration of Human Rights, do not apply locally, and the small print in the appendices to such documents as the 2005 UNESCO Convention quietly show the dissenters who will accept most, but not all of such conventions and the Universal Declaration, especially when issues such as religious minorities, women, the LGBT community, or aboriginal communities are concerned.

New issues then constantly challenge the boundaries of conventional or established rights and culture thinking. Globalisation has thrown up questions of citizenship for example, and whether more cosmopolitan forms of identity can be evolved that are more congruent with what is in many other respects (media, MNCs, patterns of travel and communication) a borderless world. In the context of climate change, now surely one of the major collective global challenges, new forms of identity that transcend the old political boundaries of the nation state are perhaps required that reflect a larger sense of responsibility than the limited category of nationality (Davidson 2004). The question of TNCs themselves are corporate 'rights' are yet another area that requires close attention (Clammer, 2019: 35-52). While all these questions cannot be addressed in this one special issue, the range of

contributions reflect critically and constructively on many of these themes. Collectively they open up for further debate and action the issues discussed in this introduction, and hopefully they will represent not only substantial contributions in their own right, but act as a springboard to the range of existing and emerging themes that arise when the linkages between democracy, culture, development and justice are exposed to debate.

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Rip it up and start again? The contemporary relevance of the 2005 UNESCO Convention on Cultural Diversity

Ben Garner and Justin O'Connor

Article Information

Abstract

Since its adoption in 2005, the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* has become a central reference point for cultural policy around the world. However, there remains little scholarly scrutiny of how effectively this instrument frames the international policy agenda around culture, economy and development under contemporary conditions of rapid, and contested, global transformation. Through a critical review of the core content of the Convention, and some of the experiences gained from its implementation over the first decade, one of the arguments proposed in the paper is that the Convention has had the effect of reinforcing a one-dimensional, 'economistic' language of cultural and public policy, in a way which offers limited progressive intellectual or political resource for cultural policy today. In response, we outline key areas where new thinking might be undertaken and from which UNESCO might offer new resources and framings for global cultural policy. We argue less for 'ripping it up and starting again' and more for the need to, critically, take stock and explore new ways forward in the search for progressive responses to the current conjuncture.

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Introduction

Global political and economic volatility over the last decade has created an uncertain policy landscape. The established political frameworks of neoliberalism and Keynesian social democracy have been brought into question by financial crisis, recession, and slow 'recovery', but also more pointedly, by the rise of new political forces – 'populist', authoritarian, protectionist, anti-science – that seem to cast the post-1945 global settlement into doubt. Related concerns around climate change, migration, and a new wave of job-threatening AI-led technologies have added new stresses and anxieties to this geopolitical turbulence.

This paper seeks to raise some of the critical issues facing international cultural policy in this contemporary scenario, focusing on one of the key measures of the last decade: UNESCO's *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (CDCE) (UNESCO, 2005). This instrument has come to occupy a special place in the framework of international cultural law: adopted in 2005, and entering into force in 2007, the CDCE became widely received as marking a standard-setting and progressive breakthrough for cultural policy globally — particularly in the way that it linked the areas of culture, economy and development — even if there have been a number of reservations about its legal weight and status. One decade on, we now have an opportunity to begin to reflect on the CDCE's contributions and contemporary relevance.

As the CDCE has now been in force for over a decade, a picture has begun to emerge of its record of implementation and some of its impacts, contributions and limitations. Most notably, UNESCO itself has produced two global monitoring reports that draw in particular on the periodic reports that Parties (signatories) are required to submit to the organisation every four years and which detail their experiences with implementation (UNESCO 2015; 2017a). These periodic reports, together with data and analyses drawn from other sources, have allowed the authors to build up a detailed account of trends in cultural policies and measures in a number of different areas, while enabling emergent trends in the cultural field to be identified so as to provide guidance for implementation looking forward. The reports also reflect some of the attempts that there have been to widen the focus of the CDCE from the issue of the regulation of the trade in cultural goods and services to a number of other issues that were given less prominence by the instrument's drafters but which have demanded greater attention in recent years – such as questions of artistic freedom, the status of the artist, and gender equality.

It is important from the outset, however, to recognise the limitations in the kind of picture that is presented in these reports: firstly, due to significant gaps in the relevant data and in the availability of Parties' periodic reports; [1] and secondly due to the nature of the periodic reporting process itself, which tends to reproduce the perspectives of the particular states/governments that draw them up, leaving a gap in critical engagement with the CDCE — a situation that has been compounded by a lack of civil society involvement and reporting on its implementation, at least until recently. In the opening to the 2015 monitoring report (UNESCO, 2015), the organisation's Director-General had written of the need for 'new discourses and approaches to guide cultural policy', yet there remains remarkably little work that aims at critically scrutinising the fundamental framing assumptions, operational discourses and inherent tensions of the contemporary international policy agenda around culture, economy and development under conditions of rapid, and contested, global transformation.

With the above points in mind, this paper interrogates the role, purpose and limitations of the CDCE as an international keystone of cultural

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[1] The two global monitoring reports have been based, respectively, on an analysis of the 71 and 62 periodic reports that have been submitted so far (which is less than half of the total that had been expected for submission; there are currently 146 parties to the CDCE) and by a lack of data on particular areas (see for example UNESCO, 2017: 28).

policy in the contemporary context. This task was initiated as a response to a set of priority issues that were agreed upon as part of a series of discussions between an international network of thinkers, activists and representatives of civil society organisations that first gathered in 2017 to address the contemporary relevance of the CDCE (these priority issues are summarised in van Graan and Brennert, 2017). The paper also draws on an Australian Research Council project 'UNESCO and the Making of Global Cultural Policy: Culture, Economy, Development' — a project framed by an urgent need for cultural policy studies to look beyond its own policy areas to the wider social and political context. The argument made is less for 'ripping it up and starting again' and more for the need to critically take stock and explore new ways forward in the search for progressive responses to the current conjuncture.

The paper begins by returning to the context in which the CDCE was conceived in the late 1990s and early 2000s. This period was characterised by growing unease around the impact of globalisation and trade liberalisation on cultural goods and services, and the accelerated domination of powerful global players as local protections were dismantled. These concerns were increasingly framed in terms of 'diversity' and 'sustainability', aligning metaphorically with the arguments used by the environmental movement for resilient ecosystems. The period also saw the growing influence of the cultural/creative economy agenda within policy circles, which emphasised the economic as well as the cultural value of cultural commodities. In this emergent policy discourse, cultural diversity and cultural value could work with the expansion of the global economy, as long as we could safeguard accumulated and diverse cultural resources for future generations.

Two decades on we face a changed global landscape, in which many of the sanguine assumptions for the global economy have evaporated, and so too the easy assumptions of the essential compatibility of the cultural and economic value embedded in the production and distribution of cultural goods and services. As a result, the limitations of the CDCE have become more pronounced.

The paper therefore goes on to reflect on some of these changes and sets them alongside a critical review of the core content of the CDCE and some of the experience gained from its implementation over the first decade. In doing so, we suggest that the CDCE has failed to challenge, and sometimes reinforced, an essentially 'economistic' language of cultural and public policy, and that it needs to revisit its core values and intellectual underpinnings if it is to provide a cultural policy resource adequate for today's challenges. We will outline some key areas where new thinking might be undertaken and from which UNESCO might offer new resources and framings for global cultural policy.

Framing the CDCE

The CDCE was forged in the context of a long-running 'trade and culture' debate that had flared up again significantly in the late 1990s. The main sponsors of the CDCE — led by France and Canada — sought a binding international instrument that could reassert the legitimacy of cultural policy mechanisms, such as quotas and subsidies, that were seen to be under threat from the growing pressures of trade liberalisation and the market dominance of powerful global cultural exporters (particularly those from the US, who was the CDCE's main opponent). In achieving this, the CDCE was built upon the concept of the 'dual nature' of cultural goods, services and activities, a formula that first gained expression in the *Universal Declaration on Cultural Diversity* adopted at UNESCO in 2001 (UNESCO, 2001). This stresses the complementary links that can exist between cultural and economic objectives in policy and affirms the simultaneously commercial and cultural values of cultural commodities as both objects of trade and expressions of 'identities, values and meanings' (UNESCO, 2005).

This intervention in the trade and culture debate was the key contribution of the CDCE and a key test for observers has therefore been its impact in the trade context. There have been a number of references to the CDCE in trade agreements concluded over the last decade (for an overview, see Guèvremont in Chapter 7 of UNESCO, 2017a). However, these have been relatively few and far between as bilateral and other trade deals have

proliferated outside of the WTO arena, and the achievement of a number of the core objectives of the instrument's sponsors has been restricted by some of the compromises and vague/hortatory language that ended up in the final draft.[2]

A key early test case of the relevance of the CDCE in the context of trade regulation and dispute was the dispute between the US and China that opened in 2007 at the WTO, soon after the CDCE's entry into force. China was the first country to cite the new UNESCO instruments on cultural diversity (the CDCE and the *Universal Declaration on Cultural Diversity* which had preceded the CDCE in 2001) in a dispute at the WTO, following a complaint that had been filed by the US regarding Chinese restrictions on the import of cultural goods and services. When the WTO panel eventually ruled in favour of the US, many observers responded by noting that this offered proof of the limited legal and political relevance of the CDCE in the context of disputes over trade and culture – although there is also some ambiguity and disagreement over how the WTO ruling should be interpreted in this regard (Garner, 2016: 120-122).

Looking beyond such questions surrounding the CDCE within the context of the trade and culture debate, the CDCE has established mechanisms for integrating culture within development policies and for fostering international cultural cooperation. These have had some influence in the content of trade agreements — such as the Economic Partnership Agreement between the EU and the Caribbean regional grouping CARIFORUM

concluded in 2008, which marked a breakthrough in a number of areas linking culture, trade and development, including in the application of Article 16 of the CDCE relating to preferential treatment for developing countries— and in the development of new policy frameworks — such as the joint adoption of a Strategy for International Cultural Relations by the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy (European Commission, 2016). The CDCE meanwhile continues to provide a central reference point for advocacy and research that makes the case for culture-led development projects, including the formation of a number of campaigns that called for the inclusion of a goal for culture in the post-2015 Sustainable Development Goals (SDGs) (which was ultimately unsuccessful, although culture is given some [brief] mentions in other goals); more recently, we see the creation of a monitoring framework that attempts to link the implementation of the CDCE to the achievement of the various SDGs.

The actual impacts of such initiatives in practice, however, have so far been quite limited (see for example Garner, 2017; Duxbury et al, 2017). This has been for a variety of reasons, but it runs much deeper than questions of the legal or political efficacy of the instrument. The CDCE's drafting, adoption and ratification around the world had drawn momentum from a number of factors. It coincided with, and has been an important contributor towards, the global rise of the 'creative economy' and all the attendant developmental, commercial and political narratives that spread with infective optimism over the 2000s (and which have tended to resist close scrutiny, at least until recently) (Banks and O'Connor, 2017). This narrative around the 'value' of culture and the creative economy became fused in the CDCE, and in a number of other cultural policy fora in this period, with an ascendant liberal narrative of diversity and sustainable development in a way which appeared able to overcome divides between hitherto adversaries: including between the conceptual and policy domains of culture and the economy (expressed in the concept of the 'dual' — cultural and economic — value of cultural goods and

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[2] One of the most commented upon weaknesses of the CDCE in this regard relates to the force with which the instrument can act as the kind of 'counterpoint' to the WTO that its supporters had hoped for. This stems from a number of points in the text of the CDCE, such as Article 20 (which concerns the relationship of the CDCE to other treaties). Neil (2006: 260) for example was among a number of commentators to note soon after its adoption that: '[Article 20] does not provide the clarity necessary to prevent further erosion of cultural sovereignty, let alone begin the difficult process of rolling back the extensive influence of the WTO and other bilateral and multilateral agreements.'

services), and even between the formerly antagonistic positions of the North and the South on questions of international cultural regulation (as had been seen with the controversies over the New World Information and Communications Order in the late 1970s and early 1980s). Over the previous decade, there had already been a number of efforts to better theorise the links between culture, economy and development — most notably the 1995 report of the UN-UNESCO World Commission on Culture and Development, *Our Creative Diversity* (UNESCO, 1995) – and to fold this into a new international agenda for culture and development. However, they lacked the kind of political momentum and support that the campaign for the CDCE brought to the issue from the late 1990s as the trade and culture debate rose in significance.

The process of conceptual and political rapprochement that came to be forged through the campaign for the CDCE has thus involved some narrowing of the issue of culture, diversity and development, to a particular set of concerns that came to be prioritised by governments and others immersed in the trade and culture debate of the late 1990s and early 2000s: namely, the regulation of trade, the growing economic and political significance of the cultural and creative sectors, and anxieties over the erosion of sovereignty regarding questions of cultural policy. Although the adoption of the CDCE did indeed signify a new international consensus on these issues of cultural policy (minus the two states that opposed the instrument, the US and Israel), it was a consensus rooted in a particular set of governmental and commercial concerns centred on questions of market regulation and the 'new' creative economy (Garner, 2016: 103-146).

In this way, the CDCE came to provide a useful reference point for a number of stakeholders working in the cultural and creative sectors, but it also involved relegating many of the other visions for cultural policy and cultural development that had been articulated over the previous decade. Vickery (2018) has argued that this was part of a moment in which an 'ideological chasm' began to open up in the international discourse on cultural policy, as the ascendance of the creative economy agenda at UNESCO (and partner UN organisations

such as UNCTAD) increasingly framed the narrative on culture and development in terminology derived from the neoliberal revival of neoclassical economics (terminology which much of the work in *Our Creative Diversity*, as well as in a number of other fora, had been at pains to problematise). This had the effect of truncating the various attempts that there had been at the international level to theorise culture and economy outside of terms of reference derived from an essentially orthodox economics, while relegating attempts at developing an agenda for cultural policy that spoke to the themes of radical democratic pluralism and related questions of gender equality, minority and indigenous rights. This had already been noted by Albro in 2005 soon after the Convention's adoption:

"[D]ebates over the diversity Convention were not so much about the relationship of culture to the marketplace, or the relevance of culture outside the marketplace, as about what the rules of the cultural marketplace should be […] The diversity of voices that might advance claims turning on the recognition of cultural differences within or between states, or outside any obvious market calculus altogether, are largely marginalized." (Albro, 2005: 252).

There was also an important geopolitical backdrop to the CDCE's adoption, characterised by the post-Cold War dominance of the US and a pressing sense, after 9/11 and the declaration of the War on Terror, of the need to avert the 'clash of civilisations' that had been famously predicted by Samuel Huntingdon and others. This was a concern which found resonance in UNESCO's mandate to promote peaceful international cultural exchange, and it filled the air of the General Conference immediately preceding the adoption of the *Universal Declaration on Cultural Diversity* in November 2001 (UNESCO, 2001: President's Foreword), an important milestone in the campaign for the CDCE. Adding to this air of urgency and solemnity around the kinds of narratives that were now being articulated about cultural diversity, many also drew parallels with the adoption of the *Convention on Biological Diversity* (in 1992) and the *Universal Declaration on Cultural Diversity* broke new ground here by making formal reference to the diversity of the

world's cultural resources as being as 'necessary for humankind as biodiversity is for nature' (UNESCO, 2001: Article 1).

Such claims for the importance of the cultural sector informed a powerful narrative with which to build support behind the CDCE in the 2000s. They provided a fertile formula with which the instrument's core supporters — the French and Canadian governments in particular, as well as a number of cultural sector and other stakeholder groups — were able to build support behind the draft at UNESCO. In the process, it gave a new lease of life to arguments about the unique or 'exceptional' nature of cultural goods and services which were struggling to gain political support in the late 1990s (in what, after all, had until then been primarily a North American and trans-Atlantic dispute over the status of the cultural sector in international trade). As the issue of the *cultural exception* widened to encompass questions of *cultural diversity* and was placed on the agenda at UNESCO, it found greater international resonance and was able to accommodate a number of other causes on the international agenda (sustainable development, artistic freedom and mobility, human rights and fundamental freedoms, among others), even if these largely remained embellishments to the central aims of the CDCE to set up mechanisms for the protection, production and exchange of cultural goods and services. Over the last decade however, many of the limitations to the kinds of conceptual and political formulae that were expressed in the CDCE, have become more apparent and the progressive momentum that had built up around the drafting and adoption of the instrument has diminished. In the following sections, we therefore begin to explore some of the consequences of this in greater depth.

The CDCE, Digitalisation and the Sustainable Development Goals

The need to ensure that the implementation of the CDCE keeps up with digitalisation and media convergence, along with the emergence of new players in the global trading environment and the evolving needs of the cultural sector, form a cluster of issues that have demanded growing political, legal and academic attention in recent years (see, for example, Richieri Hanania, 2016; Garcia Leiva and Albornoz, 2017; Vlassis, 2017; Hesmondhalgh, 2018). The regulatory, commercial and socio-political implications here are immense and pose a number of challenges, although as the most recent global monitoring report notes, the CDCE text was drafted to be 'technologically neutral', so as to ensure its continued relevance in significantly changed technological conditions (UNESCO, 2017a: 20). Whilst this is an understandable policy approach, drafted several years before the first smartphone or tablet had even appeared, the sheer scope and scale of the digital transformation, and the serious lack of policy preparedness as its ramifications became clear, need to be more fully registered.

The guidelines that were adopted at UNESCO in 2016 to support the implementation of the CDCE in the digital environment restated many of the key principles of the CDCE: equal access to digital space, artistic freedom and fair remuneration (piracy included), provisions for preferential treatment for the Global South, the rights of states to introduce relevant legislation in support of culture, and so on (UNESCO, 2017b). The initial discussions at the intergovernmental committee that had led to the generation of these guidelines made reference to the need to make specific provisions concerning issues such as the 'influence of data and algorithms on the production and distribution of cultural goods and services and the issue of media diversity'. The guidelines themselves go on to contain a series of recommendations regarding the role of the digital in creation, production, dissemination, and in reformatting the local cultural industries systems, diversifying platforms and providing equal visibility, especially for local content. Taken together, these would represent a radical re-appraisal of 'platform capitalism' in the cultural field. However, they lack a narrative capable of encompassing the full extent of this new platform capitalism – the new powerful monopolies it has spawned, the extensive extraction of personal data and the new business models around commodification and surveillance this has introduced, the transformations of multiple aspects of social life, and of the media-landscape and the sphere of culture itself. That is, though

the guidelines cover many crucial aspects of the new digital environment for culture, they read as a rather bloodless attempt to apply the principles of a previous era – culture and economy as win-win – to this new landscape. Beyond the intrinsic limitations that are generally found in operational guidelines within the UN/UNESCO systems, there is also an absence of a viable counter-narrative to that of digital utopianism, the entrepreneurial ethos ('start-ups'), and the on-going commodification not just of culture but everyday life itself.

As the challenges of digitalisation have become a focus of political and regulatory attention, other issues relevant to the CDCE have found themselves commanding less attention than in the previous decade. In one sense, such evolution can be seen as inevitable outcome of technological transformations and shifts within the cultural sector, but it also reflects a prioritisation of the issue over others. This is pertinent when considering the issue of culture and sustainable development, since the CDCE's contributions on this point had been highlighted as among its key contributions and had provided an issue around which both developed and developing countries could find common ground in the 2000s, generating momentum towards the instrument's adoption and entry into force. The commitment that the developed countries had shown on this issue during the 2000s, however, has waned as their focus on the CDCE's implementation has been channelled by digitalisation, media convergence and the management of the economic and political implications of financial crises. This was a pattern that was seen for example in the relative lack of support that developed countries had given to the campaign to include culture within the new SDGs as they were being formulated prior to 2015 (Garner, 2016: 236-237; Vlassis, 2015). The theoretical and policy connections between culture and environmental sustainability meanwhile remain particularly underdeveloped, and the field of cultural policy more broadly has been very slow to acknowledge the environmental impact of cultural production and artistic practice.[3] The CDCE itself only pays lip

service to the notion of sustainability, and although the first global monitoring report on the CDCE provides a stronger engagement with sustainability than the CDCE itself, it remains overall more focused on 'sustainable systems of governance for culture' than the integration of 'culture in sustainable development frameworks' (Throsby, in Duxbury et al, 2017: 218).

The relatively disappointing outcome regarding the place of culture in the post-2015 development agenda, has meant that it is proving difficult to keep culture high on the agenda as more recent development policies and funding streams are being formulated. This simultaneously weakens UNESCO's attempts to draw links between the SDGs and the implementation of the CDCE, particularly as the organisation once again finds itself struggling under budgetary and other pressures. It is telling that the proportion of total development aid spent on culture fell by 45% in the decade after the Convention's adoption, despite mechanisms in the CDCE such as the International Fund for Cultural Diversity (IFCD) which were designed to encourage Parties to make [voluntary] contributions to a pot of funds that can be drawn upon for cultural development projects. Meanwhile, of the 111 Parties to the CDCE that have drawn up national development plans or strategy documents, only 40% have formulated outcomes or actions specific to the goals of the CDCE (UNESCO, 2017a: 171 & 15).

In parallel with this has been a more general lack of commitment from the Global North to many of the cultural rights initiatives addressed to the claims of indigenous peoples. The United Nations' *Declaration on the Rights of Indigenous Peoples* (UNDRIP, adopted 2007) for example has received much less backing from the Global North – including by key sponsors of the CDCE such as

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[3] There have been some exceptions, particularly at

more local levels. The UNESCO 2015 monitoring report notes for example how a number of municipal governments around the world have begun to develop some pioneering approaches in this regard connecting the cultural and creative industries to sustainable development, although it gives very little detail on these initiatives (UNESCO, 2015).

Canada (which, along with New Zealand, Australia and the US, was 1 of the 4 countries that had voted against the adoption of the UNDRIP in 2007, only reversing their positions after registering a number of reservations about its domestic applicability) (Gover, 2015). As a Declaration, the UNDRIP remains weaker as an instrument of international law and has not given rise to the kinds of international legal and policy mechanisms that have been seen with the CDCE. The relationship of UNDRIP to the implementation of the CDCE has not received close attention, neither by the Parties nor the various expert facilities with which the CDCE has been associated. In part, this relates to the divisions within UNESCO between the cultural/creative industries focus of the CDCE and the tangible and intangible heritage focus of the other conventions, under which craft and traditional performance are (mostly) subsumed. Attempts to discuss crafts within the context of cultural industries have frequently met with disapproval by UNESCO, even though the visual and performing arts are included in the CDCE, and crafts can be mainstays of many smaller cultural economies.

The kind of turf demarcation noted above is not uncommon in policy, but the division speaks of something deeper. That is, the 'culture' that is the object of the CDCE tends to be already conceived as market ready product (even if produced for the public sector). As we suggested above, despite the efforts of groups such as the World Commission on Culture and Development and others in the 1990s, the CDCE speaks primarily to questions of market regulation and much less to notions of cultural diversity conceived outside of a market calculus, or to the market's relationship with the wider socio-cultural world from whence it sprang. The strands of anti-development, slow- or no-growth in the sustainability movement, and the deep suspicions of 'development' and 'growth' as intrinsically destructive that are found amongst indigenous communities (and other non-orthodox perspectives on development), thus go together in representing an 'outside' to market regulation that the CDCE and the activities around it continue to have little engagement with in practice.

The Tiring of the Creative Economy Narrative
This leads us to a number of rather fundamental

questions surrounding the continued purpose of the CDCE in the contemporary context. One is that the 'infectious enthusiasm' that has surrounded the creative economy agenda for the last two decades, and which has given the CDCE much of its political momentum, is beginning to tire. This is apparent in a number of contexts. Firstly, the kinds of claims about the instrumental value of culture that had gained ground from the late 1990s have simply become increasingly easy for policy actors to ignore, particularly at national levels. This is partly because of a continued lack of convincing evidence of the cultural sector's impact or value in particular policy domains, and partly because once the value of culture is articulated in primarily instrumental terms (i.e. its economic, social, etc. benefits) then the rationale for policy addressed to something called culture — as distinct from, say, industrial policy — becomes increasingly uncertain (particularly as economic concerns have risen on the political agenda).

This logic has left many actors within cultural sector in an increasingly uneasy position: as Hadley and Gray (2017: 97) write, if instrumental outputs are the basis upon which public policy concerns itself with culture, and if it cannot be convincingly demonstrated that culture contributes to these outputs, then why continue to fund or support it? Bhakshi and Cunningham's (2016) proposal for a separation of cultural and creative industry policies is a reflection of such unease with the kinds of connections that have been built between cultural and industrial policy areas over the last two decades, framing their argument with the observation that 'the conflation of culture with creative industries since 1997 has harmed both cultural policy and creative industries policy in the UK' (Bhakshi and Cunningham, 2016: 3). The tendency of governments to focus on the faster growing sections of the creative industries – digital media, advertising and marketing, design – at the expense of the slow or static 'lifestyle' sectors (i.e. artists of various kinds) is clear. The exception has been the large-scale cultural flagships, which along with media and digital 'hubs' or 'cities', have been used to position cities on a global creative map.

This sense of policy fragility is echoed in the

waning of the 'creative imaginary' which formed around the creative industries moment. That 'creative imaginary' envisaged that in the coming together of culture and economy, so long set against each other, culture would get greater policy recognition of its economic importance but would also bring to bear some of the values of that culture to the policy making process. Valuing culture and creativity as part of a contemporary economy, it was argued (cf. Landry and Bianchini, 1995), required a different kind of policy-mindset than that of Fordist industrial policy. But the 'culturalisation of the economy' (Lash and Urry, 1994) turned out to be the 'economisation of culture' (Oakley and O'Connor, 2015). This could be seen in the increasing precarity of creative labour (McRobbie, 2016) as well as a significant decrease in their sense of creative autonomy (Hesmondhalgh and Baker, 2011). This is a global phenomenon, and one which is not just about rate of pay and conditions of work but impacts on the subjectivities of the once vaunted 'creative class' (or at least that part of it that was actually involved in the creative industries – Florida included a wide swath of the professional and managerial classes). The association of the creative industries moment with the bundle of artistic autonomy, grass-roots small and medium enterprises (SMEs) and a loosely networked creative milieu, giving rise to a sense of a different kind of creative future, has, we would argue, largely dissipated (O'Connor, 2019b). Equations of 'creative' with 'precarious' labour, and with exclusionary practices of gentrification, have become commonplace, and easily merge amongst the young with a sense of being a 'surplus' population (Shin, 2019), often fuelling anger and alienation (Mishra, 2017).

Underlying these changes in the imaginary are transformations in the structures and dynamics of the cultural/creative industries themselves. The creative industries moment coincided with the emergence of a new set of digital technologies based in 'Silicon Valley', which was less a location than an imaginary – or ideology (Barbrook and Cameron, 1996) – in which 'start-ups' fuelled by adventurous investment capital would 'disrupt' the technologies and business models of the incumbent capitalist order. It was a Randian/

Schumpeterian 'creative destruction' that would deliver not just new growth but a new digital democracy – an imaginary that was easily rolled into the European discourses of cultural economy. However, digital democracy gave way to 'platform capitalism', in which the successful start-ups — in a winner-takes-all scenario — are now bigger than many of the older cultural industries corporations (Srnicek, 2016; Zuboff, 2019). Even so, these older corporations, through a series of mergers/de-mergers, vertical and horizontal integration/divestment, financialisation and legislative/regulative clout, remain very much in place (Hesmondhalgh, 2018). The creative industries have not opened up the kind of development possibilities envisaged by the supporters of the CDCE (O'Connor, 2019a). Indeed, the new powers of FAANG (Facebook, Amazon, Apple, Netflix, Google) and the telecoms corporations with which they are intertwined (both predicated on the control of the global information and communications infrastructure that the Global South had unsuccessfully challenged in the 1970s and 1980s in the calls for a New World Information and Communications Order at UNESCO) are more extensive and intrusive at the local level than the older companies ever were. Nevertheless, through enhanced intellectual property legislation and enforcement, through the logistical possibilities afforded by the digitalisation of cultural production, and through a proliferating set of bilateral and other trade deals that bypass the CDCE, the cultural industry corporations continue to be dominant at the global level (with a few exceptions, such as in China).

Such developments could be read as confirming the continued need for the CDCE as a resource for policymakers to pursue certain 'public' objectives by limiting the power of dominant players in the global cultural marketplace. However, it is limited in its power to do this on a number of levels. As Cornelia Dümcke (a member of the 2005 Expert Facility) wrote recently: 'Globalisation's promise was diversity; its result is the endangerment of diversity' (Dümcke 2017: 43). This is not just at the level of nation-states. The localised, embedded networks of cultural SMEs and 'start-ups' of the creative imaginary have also been reconfigured. It certainly is possible now for local companies to

reach a global audience through the internet, and this should not be underestimated. However, the platforms on which this access takes place are not owned locally (hence the CDCE's 2016 Operational Guidelines). And as before, once a small local business tries to scale up, it encounters some very powerful corporate entities which vitiate the promise of a creative industries-led economic development process. *Plus ca change*, one might say.

The changing cultural policy landscape – and the revenge of culture

Yet the cultural policy landscape has changed – and profoundly. One reason for the re-enforced dominance of the global cultural industry corporations and the expansion of 'platform capitalism', is that 'culture' as a public policy object has been effectively marginalised and hollowed out. The rise of neoliberalism in cultural policy is not simply a growing emphasis on economic benefits or econometric performance indicators – the rule of the 'bean counters' as it is commonly described – but involves a distinct form of governance (Davies, 2015). Something more tectonic has been underway. Neoliberalism's reconfiguration of the state, individual and market is one in which the kind of symbolic governance associated with culture since the late 18th century has diminished in importance. At its core, the neoliberal strategy of government is one based upon a transformation of everyday individual behaviour through tools and metrics, rubrics and techniques centred around market (or market-like) participation and choice. It has little place for the sorts of ideological or symbolic subject formation associated with liberal cultural policy (nation-building and imagined communities; self-governing citizens; ideological state apparatuses, and so on). The neoliberal attack on public culture is not aimed just at the public, but at culture as part of citizen-formation. Neoliberal cultural policy focuses on the proliferation of 'content', points of access, and means to pay of the sovereign individual consumer and the aggregation of these individual rational choice-acts represents the market-collective to

commercial providers and policy makers.[4]

In this scenario, the CDCE — focused as it has been on questions that revolve around the market regulation of cultural goods and services — has decreasing traction. Its emphasis on the economic benefits of culture — along with the promotion of entrepreneurship, business development training, value chain development, exports and so on as the primary routes to diversity and inclusion — have further re-enforced the marginalisation of its cultural aspirations. This was not the intention of many of its supporters and promoters — and most continue to hold onto various other notions of a 'cultural' value of culture — but where the CDCE agenda gets closer to the centre of decision making, the more it has tended to rely on and re-enforce an economic agenda. Market regulation, which in the 1990s might have implied the state setting limits to monopolies, to rampant commercialisation, to the penetration of international capital into the heart of the culture-media system, now tends to mean how to adapt local cultural production systems to the requirements of the international market (O'Connor, 2019a). The linguistic and conceptual resources for any other kind of challenge to the economic logic of the creative industries agenda is lacking. It is here, we believe, that a key challenge for CDCE lies.

We can see something of this in recent developments, what we might call 'the revenge of culture'. As we argued above, the CDCE set out to regulate global flows of cultural goods and services in the name of global diversity, and to do so in ways that evoked the theme of development in ways that could benefit the Global South. These global cultural flows remained very much in the hands of the Global North, and, like the discourse of globalisation itself, these flows could easily become associated with the import of 'Western' or 'cosmopolitan' lifestyles. Indeed, at certain times and in certain places the 'creative class' – at

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[4] A crucial part of neoliberalism was the theory of the sovereignty of the consumer in which every act of purchase was an exercise of everyday democracy, or as Von Mises had it 'every dollar was a ballot'. (Slobodian, 2018) p. 176

least the younger end of it – became associated with radical political change (e.g. the 'twitter' revolution), or with a challenge to the cultural legitimacy of local conservative regimes. These cultural flows were underpinned by a number of very real geo-political/economic flows, backed by military and legal power, reorganising local agriculture, manufacture, telecommunications, retail and logistics, water conservation, education, health as well as media and cultural industry systems. They could alter the very forms and rhythms of everyday life (especially in cities). What many in the global creative class might see as the 'regressive sameness' of national cultures (Appadurai, 1990) might also speak of a necessary sense of local identity and solidarity not just against some global 'difference' but as a response to the real disruption of local lives. The non-cultural power behind these global flows of capital is mostly not amenable to 'indigenisation' (processes that Appadurai, and other post-colonial theorists, saw as giving rise to multiple and de-centred modernities) without some concerted action from the nation-state. Such action can often mobilise progressive local political actors and coalitions taking a calculated stand with that nation state against 'globalisation'. Which is to say, the nation-state remains a touchstone for forms of local solidarity and control, and this can have powerful cultural dimensions. Wolfgang Streeck has made the point, against some vociferous opposition from a globalising left, that global capitalism's 'deterritorialisation' positions the nation-state as a looked-for source of local control (Streeck, 2017). Perhaps we might also relate this to Karl Polanyi's notion of the 'revenge of the social' (Polanyi, 1957) in a prior period of rampant capitalism before 1945 (and which he believed had been definitively placed behind us). Unfortunately, the revenge of culture is by no means guaranteed to bring a progressive politics.

The rise of localist and nativist authoritarian governments and movements – in Russia, Brazil, the US, India, the Philippines, Turkey, Hungary, Poland and a host of other nations and regions – indicates that the 'revenge of culture' can be as anti-democratic as the globalising forces it seeks to resist. Worse, authoritarian states can operate in the register of strong local cultural autonomy

even whilst in practice accommodating forces of global (and local) capital (Turoma et al, 2018). The 'revenge of culture' concerns those elements that creativity frequently did not include – traditions, rituals, collective sense making (aesthesis). In the face of the multiple challenges that globalised modernisation brings, many conservative groups and states can easily present 'creativity' — and the people, lifestyles and political agendas which go with it — as the personification of global forces anathema to local cultures. Conservative or authoritarian states rarely blame the erosion of cultural cohesion and values on those systems of commercial culture that they themselves did so much to bring into being and on which they often rely for legitimacy. The 'liberal', 'westernised', creative class are stigmatised as the carrier of global discourses of human rights, individual freedoms and other cultural intrusions which find their way into indigenous culture only then to undermine it.

In the face of these developments, those invested in and around the CDCE would have to articulate not only a new language of public value and market regulation but also a version of global cultural flows that does not play so readily into the hands of global corporations and local elites. The two are, of course, related.

Rip it up and start again?
Are we saying, then, that we need to 'rip it up and start again'? That's a luxury. CDCE has become established as a key international reference point addressed to cultural industries and cultural diversity. What this paper has tried to do is offer some critical engagement with the evolution of the CDCE from its genesis in the late 1990s and through the first decade of its implementation. We have attempted to identify some of its limitations in the contemporary context and to account for its loss of momentum as an international standard bearer for cultural policy. In what follows, we suggest some pointers to a renewal of the language of the CDCE and to some possible ways out of the current cul-de-sac.

First, we can't go back in search of 'balance' between those two aspects of 'dual' value which worked so well to set up the CDCE: it is too late. The cultural policy landscape has irrevocably

changed, so that there are no longer any easily accepted links between 'culture' and wider public policy goals. The 'elite' cultures that received most public funding have become more not less contentious over the last 20 years. It is no longer clear that the actual elites use such culture, or if they do it is a long way from classical ideals of citizenship, improvement, and social distinction. The thrust of post-modernist cultural studies has been to place any form of cultural judgement in a deeply invidious position, indexed to the (personal or class) interests of those seeking to making such judgements. And such postmodern tropes have now been adapted by the 'alt-right' and supporters such as Jordan Peterson. Moreover, the structural distinction between culture as art and an anthropological 'culture as a way of life', have become hopelessly confused. The latter has been used to evoke a popular or everyday culture against a reified elite culture, but the values of the former have deeply infused the culture of everyday life. The cross-overs between art and popular culture are well-documented (Frith and Horne, 1988; Fisher, 2014) and the 'creativity' at play in the creative industries drew extensively on modernist, bohemian and avant-garde tropes. Indeed, a key premise of the cultural/creative industries was that everyday life was increasingly inflected by aesthetic forms of consumption and notions of self (Featherstone, 1991; Lash and Urry, 1994). In any event, both art and ordinary culture have become pervaded by a commercial logic. Indeed, art's accelerated commodification, driven by an expanding global art market, has come about less through its reduction to a mass reproduction commodity (Adorno's and Bourdieu's fears) but through the artwork coming to exemplify the contemporary commodity itself (Boltanski and Esqueere, 2016; Lutticken, 2016). The experiential, the post-material, the relational – these are the desired qualities of a high-value added contemporary commodity. The market value of an artwork is in inverse relation to its heteronomous functionality; its autonomy is precisely the site of its commodification.

The problems of judgement in culture – how are decisions to be made if not by the market – have multiplied, which is why debates around participation – not just consumption but active involvement in the on-going process of cultural decision making – have become more important. These concerns are there in the CDCE but remain at the rather abstract level of 'civil society' involvement. But these questions are not simply about the allocation of public funding for culture. One of the problems of 'balance' is precisely how to make judgements of cultural value across the whole spectrum of the cultural sphere – which includes the media of course. The cultural industries were an attempt to achieve public policy goals for culture in the realm of industry; post the creative industries the rule-of-thumb was public policy goals for art and culture, economic goals for the creative industries. This distorted version of 'dual value' has meant that the media and design-led industries have been given over to the task of delivering economic growth. The small-scale creative ecosystem is conceived as local, developmental context for these large-scale industries. Again, the CDCE has been concerned with media diversity — increasingly so in the last few years — but at operational level too often it is the economic development arguments that have dominated. How to reconfigure the cultural/creative industries as a system that produces the 'social horizon of collective experience' (Negt and Kluge, 1993) and what kind of cultural industrial policy that might be applied is a crucial question.

But the problem of 'balance' is deeper still. It cannot be a question of giving the cultural aspect more autonomy or weight; the very notion of 'economy' is now deeply destructive and debilitating *in itself*. That is, the 'economic' with which culture seeks to achieve a balance is no longer simply about the necessary resources required to produce culture, nor the economic benefits that might come along with its cultural outputs. The 'economic' is now a kind of 'second nature', a set of laws (like those of physics) about which we are told we can do nothing other than seek to serve (Latour, 2015). The economy is now a transcendent realm and talk of balancing culture makes no sense. The route to 'balance' now of necessity goes via a thorough-going critique of economic reason, of the very bedrock of neo-classical economics. Culture has been very bad at doing this. There is much to be gained from closer

engagement with the environmental movement, to feminist economic critiques, and to the more fundamental critiques of 'development' that include the work of the decades for culture and development in the 1990s (e.g. Esteva and Escobar, 2017; Sachs, 2017). There has also been a lot of valuable work and experience gained from the recent developments in indigenous rights and *Buen vivir* (even where the claimed contributions from these have been restricted in practice) (e.g. Zamosc, 2017; Lalander, 2017). In the Global North discourses of 'well-being' and 'eudemonia' have similarly begun to proliferate (Hesmondhalgh, 2017; Banks, 2017), often with a revisiting of the works of Amartya Sen and Martha Nussbaum and some of the innovations of Human Development. Even within the digital imaginary, Postcapitalism has become a more widespread term, suggesting in various ways that the current capitalist configuration of the economy is holding back the human potential of the digital revolution (Gibson-Graham, 2006; Mason, 2015). And, as noted above, that fraction of the 'creative class' that bought into the creativity moment, and which formed much of the epistemic community for the CDCE, has become disaffected. A different kind of cosmopolitan subjectivity, which feels global and surplus at the same time, might be identified across various locales. So far, the CDCE has had very little connection with these groups – and the recent attempts to create more mechanisms for civil society engagement must generate meaningful exchanges and outcomes if the instrument is to have continuing traction.

But to repeat, we do not advocate ripping it up and starting again. Perhaps the failure to get culture into the SDGs might flag up a moment of crisis. Perhaps the CDCE is best off out of such a process, given the extensive and on-going critiques of the development agenda at multiple levels (Sachs, 2017). The CDCE is the only viable global instrument for informing cultural/creative industry policy. We have suggested that it has been fatally intertwined with an ever more destructive economic development agenda, and that it might re-examine some of the clever contrivances and theoretical innovations that allowed the global discourse on 'culture and development' to be positioned as a new 'driver' of

economic development. This re-examination might allow for the CDCE to be reconnected with a more radical set of questions around culture, politics and the economy; more radical because they are facing the sharp consequences of the global expansion of the creative economy, as well the multiple crises of the neoliberal counter-revolution of the 1970s. In so doing it would also have to identify a new kind of global constituency, as the one that drove the creation of the CDCE has now dissipated, lost momentum or has their attention trained on other matters. The CDCE remains crucial because it does act as a crystallisation point for a currently dispersed and demoralised global epistemic community of cultural activists and policy makers. It also acts as a source of cultural policy memory in a world where public policy in this area has the recall capacity of a goldfish. Those working directly from and around the CDCE have a vast knowledge and experience involved in developing cultural and cultural industries policies at local, regional and national levels. As we said above, any renewed cultural policy will have to deal with complex issues of resource allocation, markets, training, ecosystem management, participative governance and international cooperation which barely exist outside of the CDCE community. A period of deep reflection is required, not 'rip it up and start again' but *reculer pour mieux sauter*.

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An Unsustainable Modernity: democracy, the global climate emergency and environmental ethics

Barry Smart

Article Information

Abstract

The paper opens with a series of observations on the unsustainability of modernity, its distinctive features and environmental consequences, which are global in scale and scope. Consideration is given to the global climate emergency and decline in biodiversity and ecosystems and the scientific research that has been accumulating from the nineteenth century, research which has demonstrated the increasingly damaging environmental consequences of business-as-usual under modern capitalist conditions of production and consumption. Scientific evidence confirms that we are in a climate emergency; engaging critically with social and political analyses, this paper therefore focuses on questions subsequently raised about the limits and limitations of the nation state and democratic forms of political governance to deliver what is required to meet the challenge of the global climate emergency. The paper argues for a radical rethinking of the collective and the commons, to encompass all species; it concludes with a call for a Levinasian environmental ethics as the basis for any possibility, remote as that might currently seem, of achieving a sustainable ecologically just form of life not diminished by, or subservient to, anthropocentric assumptions.

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Introduction: an unsustainable modernity — what *needs* to, and what *can* be done?

We live in deeply troubled and very uncertain late modern times. We face global problems with complex interconnected genealogies, the most significant of which is the detrimental impact of modern lifestyles on the planet, on human communities, and on the habitats and lives of a multitude of other species (Kolbert, 2014). These problems stem in significant part from the differentiation of human culture from a constituted 'natural world', the identification of development with economic growth and the unsustainable exploitation of what are assumed to be limitless 'natural resources' for human production and consumption, and forms of democratic governance limited in scale and scope to the interests of human communities configured as nation-states and thereby rendered relatively ineffective to date in respect of the climate crisis affecting a multi-species world.

There is now a substantial volume of scientific evidence and a near complete consensus among active climate and environmental scientists about the climate emergency, increasing global heating and the decline in biodiversity and ecosystems. There have been a series of responses to the changes and potential future risks identified with the climate emergency, ranging from 'denial of the problem, to indifference, nonchalant resignation or blind confidence in technical solutions' (Francis, 2015: 14). Denial has been cultivated in large part by the 'merchants of doubt' and generously funded, right wing, free-market advocating think tanks (Oreskes and Conway, 2010; Klein, 2015); faith has been expressed in possible geo-engineered 'solutions'; and there have been overly-modest national policy initiatives; and too complacent international climate conferences and conventions setting future emission reduction targets.[1]

A number of organisations have emerged to stimulate public awareness about the climate emergency, the unsustainability of modern life styles, and the forms of environmental injustice produced. Campaigns have been conducted to counter the complacency of governments in what Naomi Klein (2015: 360) has described, in recognition of both the sluggish character of governmental responses and the oil, gas, and mining industries close relationships with the state, as 'fossilized democracies'. Three relevant contemporary examples are provided by 350.org, Extinction Rebellion, and YouthStrike4Climate. 350.org is active in 188 countries and claims to be 'building the global grassroots climate movement that can hold our leaders accountable to science and justice' (https://350.org/about/). Extinction Rebellion began in the UK in 2018 and is now active in 35 countries and engaging in forms of direct action in response to the ineffectiveness of current policies to combat global heating and biodiversity loss (Watts, 2018a). And YouthStrike4Climate is taking 'direct action where older generations have failed', including organising a global climate strike in 2019 across more than 130 countries (Monbiot, 2019; UK Student Climate Network).

The relative ineffectiveness to date of governmental responses to the scale, scope, depth, and complexity of the accumulating difficulties and dilemmas identified with the global

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[1] These include the 'World Climate Conference' of the World Meteorological Organization held in Geneva February 1979; the 'World Conference on the Changing Atmosphere: Implications for Global Security' held in Toronto June 1988, which placed emphasis on the issue of greenhouse gas emissions and climate change and called for a 20% reduction below 1988 levels in global carbon dioxide emissions by 2005 (Klein, 2015: 55); United Nations Conference on

Environment and Development (UNCED), also known as the 'Rio Summit', held in Rio de Janeiro June 1992, at which an international environmental treaty the United Nations Framework Convention on Climate Change (UNFCC) was signed, with the objective of stabilising concentrations of greenhouse gas in the atmosphere at a level that would 'prevent dangerous anthropogenic interference with the climate system' (United Nations, 1992 : 9); in 1997, the UNFCC was extended through an international treaty the Kyoto Protocol in which countries committed in a first period (2008-2012) to attempt to achieve differentiated targeted levels of emission of six greenhouse gases (https://unfccc.int/process-and-meetings/the-kyoto-protocol: accessed 1/3/19) followed in December 2012 by the Doha Amendment to the Kyoto Protocol which initiated commitment in a second period (2012-2020) to new emission reduction targets (https://unfccc.int/process/the-kyoto-protocol/the-doha-amendment: accessed 1/3/19); and then in Paris in 2015, a new agreement was achieved setting out nationally determined contributions to come into force in November 2016 to keep 'global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius' (https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement: accessed 1/3/19).

climate emergency calls into question the appropriateness and readiness of existing forms of political governance. What precisely in our existing unsustainable circumstances might 'sustainability' involve? What is the meaning of environmental justice in a multi-species world in which there is an accelerating loss of biodiversity and a disregard for so many significant others? As Ingolfur Blühdorn has noted, notwithstanding the interventions of activist movements, Green political parties, environmental researchers, and other agencies, 'the developmental trajectory of advanced modern societies… precludes… the transition of these societies towards sustainability' (2013: 16-17).

The complex configuration of problematic issues, risks, and threats that we now face is recognised, in significant part, to be a consequence of the globalisation of modernity, and in particular the globalisation of modern industrial capitalist modes of production and consumption. Particularly problematic is the cultivation of a seemingly endlessly expansive culture of consumerism that, as Thorstein Veblen anticipated, has made the purchase and possession of material goods seem 'indefinitely extensible… an integral part of one's scheme of life… [and] hard to give up' (1994 [1899]: 102). Modern institutions, in particular industrial capitalist production and its culture of consumerism, may have developed first in the West but, as Anthony Giddens (1990) observed, they are now global in scope, as are the high consequence economic, ecological, political and associated risks their globalisation has brought in its wake.[2] Modernity now 'looks unsustainable' (Giddens, 2011: 8). As the head of the Roman Catholic Church Pope Francis remarked in an address to popular social and ecological movements:

'An economic system centred on the god of money needs to plunder nature to sustain the

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[2] A range of terms have been employed to conceptualise contemporary conditions including late, radical, reflexive and liquid modernity, as well as various 'posts' as in postmodernity and postmodern society. In respect of the matters I am addressing in this paper, whose genealogy can be traced back to institutions and forms of life developing from the eighteenth century, powerfully shaped by the growth and global diffusion of industrial capitalism and an increasingly expansive culture of consumerism, 'modernity' constitutes the most appropriate designation.

frenetic rhythm of consumption that is inherent to it. Climate change, the loss of biodiversity and deforestation, are already showing their devastating effects in the great cataclysms we witness' (Francis, 2014).

It is in recognition of the enormity of such late modern difficulties that Zygmunt Bauman (2017: 159) identified 'a yawning gap between what needs to, and what can be done… between the size of the problems humanity faces and the reach and capacity of the tools available to manage them'. As we try to determine how we might deal with the scale and scope of the urgent problems we now face, democratic forms of government, sustainability initiatives and policies, and ideas about and associated movements campaigning for environmental justice may be amongst the most significant and perhaps best tools potentially available to us. However, are the 'tools' fit for purpose? Can democracies respond effectively to the threat of environmental catastrophe? Scientific evidence indicates that we are on the verge of a climate catastrophe and that dramatic measures are now required to stave off the worst consequences, raising questions about the capacity of liberal democracies in particular to deliver what is required (Gardner and Wordley, 2019; UNEP 2018; Bendell, 2018; Shearman and Smith, 2007).

Science, human activity and the environment

Science has been providing evidence of the detrimental impact of particular forms of human activity on the environment for over a century. In *Capital* (1976[1867]: 638), Karl Marx made reference to the way in which capitalist transformation of the process of production not only alienates and impoverishes workers but also how, in the case of capitalist agriculture, 'all progress in increasing fertility of the soil for a given time is a progress towards ruining the more long-lasting sources of that fertility'. Marx's (1976: 637) critical concerns about capitalist production hindering 'the operation of the eternal natural condition for the lasting fertility of the soil' were reiterated in a series of comments in 2014 by Maria Helena Semedo, FAO Deputy Director-General, on the causes of soil degradation and erosion, which include chemical-intensive farming

techniques, deforestation, climate change and global warming. Semedo stated that 'the current escalating rate of soil degradation threatens the capacity of future generations to meet their needs' (FAO 2014). Given current trends 'all of the world's top soil could be gone in 60 years' (Arsenault 2014). The IPCC (2019a) report *Climate Change and Land* confirmed the scale and extent of land degradation under current unsustainable land management practices and the contribution better land management might make to both improved food security and tackling climate change.

In the course of the nineteenth century, natural scientists argued that increased levels of carbon dioxide (carbonic acid gas) in the atmosphere would be likely to increase the temperature of the Earth's surface (Joseph Fourier 1827; Eunice Newton Foote 1856; John Tyndall 1872). An increasing accumulation of scientific evidence subsequently documented the respects in which 'the carbon dioxide and water vapor of the atmosphere have remarkable power of absorbing and temporarily retaining heat rays… It follows that the effect of the carbon dioxide and water vapor is to blanket the earth with a thermally absorbent envelope' (Chamberlin, 1899: 551).

In 1961 American scientist Charles David Keeling demonstrated that atmospheric carbon dioxide levels were rising steadily as a result of human induced emissions and in 1965 the President's Science Advisory Committee requested Roger Revelle to produce a report on the 'potential impacts of carbon dioxide-induced warming' (Oreskes and Conway, 2010: 170). The report estimated that by the end of the century there would be 25% more carbon dioxide in the atmosphere and that 'marked changes in climate… could occur' (Orsekes and Conway, 2010: 170). In the 1970s a series of scientific publications documented the increasing influence of human activity and use of fossil fuels on the climate. This research provided further evidence on the greenhouse effect or impact of carbon dioxide in the atmosphere (Sawyer, 1972; World Meteorological Organization 1979; Report of an Ad Hoc Study Group on Carbon Dioxide and Climate, to the Climate Research Board, Assembly of Mathematical and Physical Sciences, National

Research Council, 1979). In this period a number of other reports, prepared by the US National Research Council and the Energy Research and Development Administration, warned that continuing fossil fuel use would lead to 'intolerable and irreversible disasters' (Rich, 2019: 41) and a paper on climatic change and global warming by Wallace Broecker, a professor of geochemistry, specifically warned that:

"the exponential rise in atmospheric carbon dioxide content will… by early in the next century… have driven the mean planetary temperature beyond the limits experienced during the last 1000 years' (1975: 460).

In the course of the twentieth century, critical social researchers argued that modern industrial modes of production and consumption, and the fossil-fuelled growth imperative integral to capitalist economies in particular, were detrimental to the environment (Penty, 1922; Veblen, 2006[1923]; Polanyi, 2001[1944]; Carson, 1962; Mandel, 1978; Gorz, 1983[1975]; Bahro, 1984; Jackson, 2009; Giddens, 2011; Smart, 2010; Clammer, 2016). Social and economic analysts might not have made explicit reference to the 'unsustainability' of prevailing practices, but they made clear that 'it is simply impossible for civilisation to continue on the road it is travelling' (Penty, 1922: 123). As André Gorz stated, 'our present mode of life is without future… our world is ending;… if we go on as before, the oceans and the rivers will be sterile, the soil infertile, the air unbreathable in the cities' (1983[1975]: 12).

In the 1970s Margaret Mead became interested in 'the interactions between the world society and its planetary environment' and was particularly concerned about the lack of 'public awareness of the growing problems and few efforts to develop long-term national and international solutions' (Leavitt, 1980: xv). In 1975 Mead wrote a position paper, 'Society and the atmospheric environment', for a National Institute of Environmental Health Sciences conference held in North Carolina. Mead recognised that climate change political policy decision making had to be transformed in both scale and scope and that greater public awareness of the long-term consequences of their actions was required:

'We are facing a period when society must make decisions on a planetary scale… Today's natural catastrophes and environmental interventions affect the whole of human society – interconnected as it is in reality though not yet politically capable of acting in concert… Unless the peoples of the world can begin to understand the immense and long-term consequences of what appear to be small immediate choices… the whole planet may become endangered' (1980[1975]: xvii).

Mead believed that democratic governments and policy makers were beginning to appreciate the gravity of the developing global climate change threat. However, she recognised that they were 'trapped in immediacy', confronted by the difficulty of needing to make significant and unpopular decisions in the present to forestall potentially catastrophic future consequences. Such decisions, if made and generally they were not, would be likely to provoke clashes 'between those concerned with immediate problems and those who concern themselves with long-term consequences such as… the next 25 to 50 years for possible climatic change' (Mead, 1980: xvii-xviii). The critical issue identified by Mead continues to impede policy development and action, namely the generally dilatory response of political policy decision-makers to scientific research evidence and warnings. Interests, political and economic, continue to intrude and impede, and indeed call into question scientific evidence and advice that may discredit and, if implemented in policy, prevent fossil-fuelled business-as-usual (Mead, 1980: xix). As a Republican member of the House Science Committee remarked in 1980 in response to the difficulties encountered in attempting to control increasing atmospheric carbon-dioxide levels:

'Do we have a problem? We do… It is the political problem of the inertia of the economic and political system and the time it takes to get decisions put into effect' (Anthony Scoville quoted in Rich, 2019: 56).

The nation-state and global climate change

While acknowledging the relative effectiveness of the nation-state in exercising territorially bounded 'concerted collective action', Bauman (2017: 159)

observes that it is 'demonstrating daily its singular unfitness to act effectively under the present condition of planet-wide interdependence of humans'. This lack of fitness is exemplified by the all-encompassing global problems of human induced or anthropogenic climate change and biodiversity decline, which are confirming the limitations of the nation-state system (IPCC, 2019b: 2015; IPBES, 2019; Beck, 2016).

The current and projected consequences of anthropogenic climate change and decline in biodiversity indicate the unsustainable nature of prevailing globally extensive modern forms of life and call into question the capability, indeed the willingness, of nation states, including liberal democracies, to reconfigure late modern ways of living. In short, 'the post-war international "system" of nations is entirely unfitted to the kind of broad-ranging international cooperation now required' (Manne, 2013). Given accumulating evidence of the unsustainability of modernity, what is required is nothing less than a major process of economic, cultural, and political transformation. As John Clammer (2016: 150) has cautioned:

 ''fixing' things on an ad hoc basis is no longer adequate to the tasks that confront the global community, tinkering with the machine is not enough – it needs replacing, and not with another, bigger machine, but with an organic conception of society and its constituent parts and its relationship to nature.'

There are growing reservations about the capacity of liberal democracies to persuade citizens to 'act in accordance with what science says the long-term global public good requires' and introduce measures necessary to reduce greenhouse gas emissions 'as a political priority' (Burnell, 2012: 833). In response to the indecisiveness of the democratic response to the climate crisis Naomi Klein suggests there is a need to rethink and rebuild 'the very idea of the collective, the commons, the civil, and the civic' (Klein, 2015: 460). Fixing things will require an end to both the unsustainable growth imperative of global capitalism and the favouring of corporate and consumer interests, and, in turn, the practice of a form of government that is able to implement

policy initiatives that prioritise the commons, inclusive of all species and ecosystems (Shearman and Smith, 2007; Hamilton, 2010). Given the accumulating knowledge we have of the consequences of anthropocentric climate change, global heating, and other aspects of human activity on multiple species, as well as our belated awareness that the fate of humankind is bound up with biodiversity and 'ecosystems that depend upon the multitude of species to function' (Magdoff and Foster, 2010: 3), a radical rethinking of the collective and the commons to encompass all species is long overdue. What has been termed a `whole-of-community' approach is required, one that recognises the co-constitutive and complex multiple-networked articulation of the social and the natural, and 'views community as a shared resource with a goal of benefitting all [species as] community members' (Marshman, Lay-Palmer, and Landman, 2019: 2: 3).

Global warming, or more appropriately 'global heating' (Watts, 2018b) or 'hothouse Earth' (Schellnhuber et al, 2018), is the most urgent challenge confronting all nation-states. There are significant implications for the practice of democratic forms of government, as well as for what might be constituted as environmental justice in the current epoch designated the Anthropocene (Crutzen, 2006). Documented scientific evidence of anthropogenic climate change includes global temperature increases, rising sea levels, the melting of ice caps and glaciers, ocean acidification, and an increase in extreme weather events, as well as forms of environmental injustice and damage inflicted not only on human communities but also other species (Shaftel, 2019). However, to date effective wide-ranging initiatives to limit global warming have been lacking, leading the Intergovernmental Panel on Climate Change, which has a reputation for 'significantly underestimating the pace of [climate] change' (Bendell, 2018: 6), to warn that time is running out if we are to 'limit global warming to no more than a 1.5°C rise above pre-industrial levels', an aspiration that depends upon nation states very quickly committing to challenging greenhouse gas 'emission reductions' (Allen et al, 2018: 54: 56). What is now required is of an unrivalled order in scale, scope, and

magnitude and necessitates social, economic and technological transformations informed by 'global and regional sustainable development pathways' (Allen et al, 2018: 56).

What needs to be done is well-enough known, namely substantially reduce greenhouse gas emission levels now and achieve net zero emissions well before 2050 (Shabecoff, 1988; Hamilton, 2010; United Nations, 2019). However, given the complex respects in which uses of fossil fuels are so deeply embedded in and articulated with democratic politics, modern ways of living, powerful corporate interests, and the future assumed as 'a limitless horizon of growth' (Mitchell, 2009: 422), how to initiate and implement the necessary processes of transformative change is proving to be 'a uniquely challenging historical predicament' (Hamilton, 2010: 225). The task is made more difficult by resistance to the very notion of anthropogenic global warming, an industry of climate science denial that there is even a problem to be overcome, and associated heavily funded campaigns to promote the idea that scientific evidence on the subject remains contentious (Oreskes and Conway, 2010).[3]

The Montreal Protocol of 1992 contributed to a reduction in the problem of the hole in the ozone layer in the atmosphere. Subsequent global environmental assemblies designed to bind governments of advanced economies to greenhouse gas emission targets, Kyoto, 1997, Copenhagen 2009, and Paris 2015, have proven much less effective. Calculations of national and corporate interests, albeit short-term in character and in environmental terms short-sighted too, have prevailed and prevented the development of effective forms of cooperation. As Robert Kuttner (2018: 255) has argued, the ozone agreement was approved 'relatively early in the current era of environmental concern, before the massive

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[3] For an analysis of the financial resources and organizations engaged in climate science denial in the United States of America, see Brulle (2014). Drawing on data sourced from annual IRS returns Greenpeace calculated that in the period 1997-2017 'Koch Family Foundations … spent $127,006,756 directly financing 92 groups that… attacked climate change science and policy solutions' (Koch industries: secretly funding the climate denial machine - https://www.greenpeace.org/usa/global-warming/climate-deniers/koch-industries/ (accessed13/5/1)

corporate backlash set in'. While the United Nations is an important international forum for discussion and production of reports, as well as a significant agent of exhortation — exemplified by the call to the Climate Summit 2019 and the identification of 'prioritized… action portfolios … having high potential to curb greenhouse gas emissions and increase global action on adaptation and resilience' (United Nations, 2019) — it is relatively limited in what it can achieve in the face of nation states wielding their sovereignty as both weapon and shield as they engage in international competition and prioritize narrow national interest over global cooperation and the wellbeing of all countries and citizens around the world. United Nations and UNESCO reports have demonstrated convincingly that the climate crisis is articulated not only with the economic development policies of nation states but also the ways in which we live and engage with other species and ecosystems. Evidence of the increasingly detrimental climate impacts on natural and cultural World Heritage sites across the world indicates that the need to respond is urgent but to date such matters of pressing concern are not being adequately addressed (UNEP and UNESCO, 2016; UNESCO, 2007: 2008).

The first United Nations Conference on Climate Change (COP 1) was held in Berlin in 1995 and COP conferences have been held annually ever since, but not once in the USA, China, Russia, Iran, South Korea or Saudi Arabia, six of the ten countries with the highest levels of carbon dioxide emission levels in 2015 (Union of Concerned Scientists, 2018). Since the Berlin conference global carbon dioxide atmospheric concentration levels have increased from 360.82 ppm in 1995 to 406.55 ppm in 2017 (Ritchie and Roser, 2017) and in the course of a briefing about COP 25, the 2019 Climate Summit, Maria Espinosa, United Nations General Assembly President, stated that '2019 is a critical year, the "last chance" for the international community to take action on climate change' (UN News, 2019). Unfortunately, COP 25 offered little more than an admission that carbon emission targets are too weak and that the international community had 'lost an important opportunity to show increased ambition on mitigation, adaptation & finance to tackle the climate crisis' (UNFCCC, 2019).

How many more "last chances" do we have? Back in 2012 Brad Werner delivered a talk at the American Geophysical Union conference with the title 'Is earth f**cked?' and later in response to a journalist's request for a brief non-technical answer to the question he responded 'More or less' (Klein 2015: 459), a view categorically endorsed by Jem Bendell (2018: 12) who argues that 'we are set for disruptive and uncontrollable levels of climate change'. In *This Changes Everything* (2014) Naomi Klein conjures up modest hope, suggesting that there is 'just enough time', providing something can be done about the inability of 'our political class' to implement appropriate policies, wedded as it is to 'free-market ideology' (2015: 459-460). As the IPCC (2019b: 20) has warned:

'Estimates of the global emissions outcome of current nationally stated mitigation ambitions as submitted under the Paris Agreement… would not limit global warming to 1.5°C, even if supplemented by very challenging increases in the scale and ambition of emissions reductions after 2030 (high confidence). *Avoiding overshoot and reliance on future large-scale deployment of carbon dioxide removal (CDR) can only be achieved if global CO2 emissions start to decline well before 2030* (high confidence) (emphasis added).

The signs currently are far from promising, there is significant continuing extraction and use of fossil fuels, deforestation, agricultural, industrial, and consumer practices producing rising levels of greenhouse gas emissions (Klein, 2019) and, in addition, in defence of existing industrial practices, investments, and short-term interests, opposition and resistance to the very idea of policies designed to cut back on the burning of fossil fuels to reduce emission of greenhouse gases (Hamilton, 2010; Kitcher, 2010). As Magdoff and Foster state:

'The problem is that very powerful forces are strongly opposed to these measures. Hence, such reforms remain at best limited, allowed a marginal existence only insofar as they do not interfere with the basic accumulation drive of the system' (2010: 14).

Everyone in the growing global consumer class is to varying degrees culpable, adding to rising global greenhouse gas emission levels by continuing to participate in increasing consumption of fossil-fuelled manufactured commodities and services. As Klein observes, '[f]aced with a crisis that threatens our survival as a species, our entire culture is continuing to do the very thing that caused the crisis' (2015: 2). Moreover, the European Commission's forecast on the anticipated growth in consumerism suggests the problem of reducing emission levels is likely to increase further:

'By 2030, the middle class is expected to reach 5.6 billion people. This means an additional more than 2 billion people with increased purchasing power than today. Most of this growth will be in Asia. By 2030, China and India together will represent 66% of the global middle-class population and 59% of middle-class consumption... changes in consumer behaviour and consumption patterns are expected to increase demand for food, water and energy by approximately 35%, 40% and 50% respectively by 2030' (European Commission, 2018).

Other things being equal such growth in consumption will lead to significant further increases in carbon dioxide emissions per head of population, exacerbating the problem of climate change (Jackson, Quéré, Andrew, Canadell, Korsbakken, Liu, Peters, and Zheng, 2018).

Deliberations on democracy and climate change

Liberal democratic forms of government, with their competing political parties and short-term electoral cycles, confront particularly challenging dilemmas in respect of the policy initiatives that are necessary to respond effectively to the climate emergency and biodiversity and ecosystem decline. David Runciman (2018: 141: 104-5) describes liberal democracy and the modern state as slow and often 'too unwieldy for the twenty-first century' and takes the view that democracies 'cannot control existential risk'. Democracies find acting decisively difficult in the absence of demonstrable present cause, 'are too easily distracted', and any advantage they may have had over other forms of government in dealing with

'contamination of the environment' has passed (Runciman, 2018: 126: 89). In sum, democracies are now looking 'increasingly erratic when it comes to maintaining a fit space for human habitation' and the multitude of other species, that Runciman (2018: 90) neglects to consider, and with whose existence the human species is so closely articulated.

In liberal democracies, there is a lack of long term thinking necessary to respond effectively to the need to limit climate change and develop adaptive strategies to navigate the disruptive consequences of 'the heating and instability already locked into the climate' (Bendell, 2018: 10). Electoral time frames of 3, 4, or 5 years tend to lead to a preoccupation with the immediate and short term as parties compete for votes and defer potentially unpopular medium and longer-term policy initiatives. The global issues that warrant attention may not resonate at all with particular national communities and their electorates, for whom there may not appear to be any urgency, indeed any perceived current problem at all (Beck, 2016). The increasingly global matters that need to be addressed, particularly the climate emergency, overflow the territorial boundaries of nation states and demand global responses and, in turn, the practice of forms of ethical global citizenship, caring for others, wherever and whoever the others may be, including 'spatiotemporally distant people (i.e., the global poor and future generations) and genetically distant (non-human) nature' (Di Paolo and Jamieson, 2018: 403).

We are so preoccupied with ourselves and our interests and priorities that 'we fail to notice that we are destroying the habitat on which our future [and that of future generations and occluded other species] depends' (Runciman, 2018: 87). Liberal democratic governments tend to prioritise the short-term over longer-term more complex policies required to mitigate and adapt to climate change, respond to the unsustainability of modernity, and address environmental injustices, because 'it is hard to persuade people to focus on the risk of things that haven't happened yet' or are not happening to them, as yet (Runciman, 2018: 105). Liberal democracies are also vulnerable to the 'corporate behemoths', the

lobbying of powerful business interests and, particularly in relation to the climate emergency, those corporations with significant investments in fossil fuel industries, for whom emission reduction policies are a terminal threat to 'business as usual' (Runciman, 2018; Povitkina, 2018; Oreskes and Conway, 2010). The concern for vulnerable business interests is that climate science research will lead to a significant increase in governmental intervention, regulation, and taxation to fight climate change, which is why the science has been disputed by fossil fuel corporations and conservative and libertarian public policy organizations, including The Heartland Institute and The Heritage Foundation.[4]

Ulrich Beck (2016: 10) argues that the fundamentally different 'cosmopolitized world' of the twenty-first century is emerging not by design but through metamorphosis, that 'the frame of action is no longer national and integrated but global and disintegrated' and this is especially the case in respect of climate change which presents a fundamental challenge to democracy. In providing conceptual clarification of metamorphosis Beck makes reference to the caterpillar being metamorphosed into a butterfly, only to proceed arbitrarily to limit the notion as follows: 'metamorphosis is not social change… it is a *mode of changing human existence*. It signifies the age of side effects. It challenges our way of being in the world, thinking about the world, and imagining and doing politics' (Beck, 2016: 20 emphases added). We know it is not only the world of *human* existence that is changed by the processes of metamorphosis Beck (2016: 42)

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[4] For three decades a number of the leading global fossil fuel companies, including 'Chevron, ConocoPhillips, ExxonMobil, and Peabody Energy' have sought to promote their political objectives and maintain profits by engaging in disinformation practices designed to distort climate science findings, deceive the public, and block policies designed to hasten… transition to a clean energy economy. Their tactics have included collusion, the use of front groups to hide companies' influence and avoid accountability, and the secret funding of purportedly independent scientists (Mulvey, Shulman, Anderson, Cole, Piepenburg, and Sideris, 2015). See also InfluenceMap Report (2019) 'Big oil's real agenda on climate change: how the oil majors have spent $1 billion since Paris on narrative capture and lobbying on climate' (https://influencemap.org/report/How-Big-Oil-Continues-to-Oppose-the-Paris-Agreement-38212275958aa21196dae3b76220bddc (accessed 13/5/19)

identifies, the worlds of 'other than human persons' have been transformed dramatically by human-induced 'side effects' and 'normalized damage', indeed the habitats and lives of nonhuman animals are increasingly being degraded and destroyed (Davy, 2007: 40). Moreover, the unacknowledged human-induced changes in the worlds of multiple other species, explored by Jacob von Uexküll (2010), are having a significant range of detrimental impacts on human existence. As Sir Robert Watson, Chair of the Intergovernmental science-policy Platform on Biodiversity and Ecosystem Services (IPBES), noted of such significant 'side effects': '[t]he loss of species, ecosystems and genetic diversity is already a global and generational threat to human well-being' (IPBES, 2019).

Climate change has been framed in two ways according to Beck (2016: 36), namely (i) normatively and politically – 'What can we do against climate change?' and (ii) sociologically and analytically – 'What does climate change do to us, and how does it alter the order of society and politics?' The suggestion is that the second question 'allows us to think beyond apocalypses or the salvation of the world and focus on its metamorphosis'. However, the 'us' that climate change is considered to affect largely occludes the multiplicity of nonhuman animals exposed and vulnerable to humanly induced environmental changes. There are merely cursory references to the 'existential threat to polar bears' (2016: 20) posed by climate change and the melting of the glaciers; an oblique undeveloped reference to 'new forms of understanding and caring for nature', potentially emerging from recognition of climate change as a 'global risk to all civilization' (2016: 46); a brief reference to 'declining fisheries… [and] species extinction' (2016: 67); and a passing reference to the 'metamorphosis of nature into a civilizational threat' (2016: 106-7) in the course of a discussion of radiological contamination and environmental risk.

Beck claims to be rethinking the fundamental concepts into which current discourses on climate change are contained. However, the rethinking does not extend in any meaningfully effective way beyond the world of humanity. Where there is a consideration of the notion of the Anthropocene

discussion is confined to social class inequalities in experiences of global risks, which is an important matter, but inequalities and injustices arising from the Anthropocene are not limited to one species. To the contrary, the fates of multiple, if not all, species are now closely articulated as is inadvertently illustrated by Beck's (2016: 97) consideration of perspectives on radiation risk in a chapter with the ironic subtitle 'politics of invisibility'. In his discussion of radiological contamination in the period since the nuclear accident in 1986 in Chernobyl, Beck discusses the various unequally distributed risk positions people occupy as a consequence of lack of awareness, different perspectives on radiation risk, and living with 'invisible unknown risks'. But there is no consideration of the 'Anthropocene positions' and risks imposed upon other species, merely the comment that there has been a 'metamorphosis of nature into a civilizational threat' and related observations on cows grazing on contaminated pastures leading to the production of radionuclides in milk and dairy products (2016: 105: 106).

The metamorphosis of the multiplicity of nonhuman worlds that are inextricably articulated with the world of 'humanity' and suffer extensively from the consequences and injustices it delivers, including destruction and degradation of habitats and extinction of species through exploitation, pollution, and reduction of survival and reproduction rates, is not addressed in Beck's analysis (Ceballos, Ehrlich, and Dirzo, 2017; Peggs, 2012). The lack of significance accorded to the impact of humanity on biodiversity and ecosystems is exemplified by the brief dismissal of 'sustainability' as an 'umbrella' term and as 'a new meta-discourse of urban planning embedding all sorts of value conflicts' (Beck, 2016: 180).

Questions Beck (2016: 181) poses towards the conclusion of his text consider the challenge climate change represents to democracy:

'How much climate change can democracy endure? How much democracy does climate protection require? How is democracy possible in a time of climate change?'

The unpacking of the questions leads to an interesting proposal, a reinvention of democracy rooted in the polis, a (re)turn to the city, specifically to global cities as potential sites for the generation of 'alternative communities of shared risk', but despite references to cities as sites of 'experimentation' and 'new forms of climate citizenship' (Beck, 2016: 182) there is no recognition of the multiplicity of nonhuman communities exposed to and sharing involuntarily in the risks of climate change. Throughout Beck's analysis is vulnerable to the charge that it is one-species-dimensional, an exemplification of anthropocentrism. The disconnection of humans from nature, the division between human and non-human, and the elevation of human self-interest and consumerist values, as Clive Hamilton (2010: 152: 226) has argued, makes it much more difficult to meet 'our obligations to our fellow humans and the wider natural world' and impedes an effective response to the climate emergency. Beck's (2007) contention that the politics of climate change necessarily has to be 'inclusive and global' is correct but inclusivity has to go beyond humanity to encompass other species and the ecosystems on which we all depend.

The political economy of unsustainability and environmental injustice

To date international agencies and national governments, including liberal democratic systems of government, have not proven to be effective in tackling climate change, to the contrary greenhouse gas emissions have accelerated (Triffitt and Mcleod, 2015; Di Paolo and Jamieson, 2018). The overriding priority for national governments has been, and continues to be, the short-term wellbeing of their economies — economic growth, capital accumulation, the profitability of businesses, and increasing consumption — in effect, business as usual, which is detrimental to, and in so many ways destructive of multiple species, biodiversity, ecosystems and the environment (Magdoff and Foster, 2010: 11). Management of the conditions conducive to the prevailing economic growth interests and necessities of globalized capital is a longstanding feature of liberal democratic governments, a significant source of their legitimacy, but also a powerful impediment to the introduction and implementation of the radical environmental

policies now urgently required (Rancière, 1998: 113; Kuttner, 2018; Klein, 2019).

In respect of the climate emergency, extending democratic procedures and mechanisms into the economy will not generate the changes required. As far as the environment is concerned, capitalism is *the* determining global reality, in the final instance it is the routine operation of a now globalised capitalist economy that has precipitated the environmental difficulties and risks now encountered, threatening 'the survival of life on Earth as we know it' (Park, 2015: 202). Growth is an intrinsic and necessary constituent of capitalism, it is in its DNA, and perpetual growth is, as Serge Latouche (2009: 3) confirms, 'incompatible with a finite world'. Latouche sums up our predicament concisely: 'A generalized capitalism cannot but destroy the planet' (2010: 91), a proposition for which a wealth of evidence already exists and more is rapidly accumulating (Shearman and Smith, 2007; Hamilton, 2010; Klein, 2015; Park, 2015; Wright and Nyberg, 2015; Rich, 2019).

Moreover, in so far as the state operates to facilitate the reproduction and accumulation of capital, it is difficult to see how the radical changes that are necessary can be delivered through the democratic mechanisms that are a part of the state apparatus (Mitchell 2009). As Zizek has suggested, the idea that democratic mechanisms constitute 'the only framework for all possible change … prevents any radical transformation of capitalist relations' (2010: 450). As the slow and generally ineffective policy responses to the scientific evidence on climate change and biodiversity decline illustrate, it is the interests of capital that state political elites generally tend to favour, protect, and promote, and they seem 'unable and/or unwilling to control and regulate capital even when the very survival of the human race is ultimately at stake' (Zizek, 2010: 334). Reflecting on the impasse in which we find ourselves, Frederic Jameson's comment on the stark consequences of the commercial transformation of the globe seems particularly apposite: 'Someone once said that it is easier to imagine the end of the world than to imagine the end of capitalism' (2003: 76).

This is the terrain that Blühdorn designates as the politics of unsustainability, not a new politics that is 'post-democratic', but rather a form of politics that is inextricably bound up with the interests of capital, pursuit of economic growth and cultivation of a culture of consumerism. The emergence of the global climate emergency and biodiversity loss as matters of increasing concern have exposed the limitations of liberal systems of democratic governance to engage with the unsustainability of modernity and the environmental injustices inflicted on human and nonhuman animal communities. On the one hand in late modern capitalist societies there is the pivotal position occupied by consumer needs, desires, and expectations, the association of quality of life and wellbeing with material goods, services, and experiences and 'ways must be found to meet them', but on the other hand there is the growing sense that a radical cultural and 'structural transformation of modern capitalist consumer society' is necessary to avert the prospect of ecological catastrophe (Blühdorn, 2013: 20).

Notwithstanding the compelling scientific evidence and images of a climate emergency, biodiversity decline, and environmental injustices affecting human and nonhuman animal communities, the socio-economic structures of late modern capitalism and associated consumer lifestyles not only endure but are proliferating and by so doing impede further the prospect of initiating policies and programmes of action that are vitally necessary to limit the impact of anthropogenic climate change. As the *Financial Times* (2019: 22) warned in its critical consideration of continuing increases in global carbon emissions 'Leaders have yet to grasp enormity of climate task'.

Liberal democratic political systems, with their emphasis on freedom, individualism, choice, and negotiation in respect of present and short-term future matters, are ill-prepared and ill-equipped to address what Blühdorn (2013: 23) terms non-negotiable 'categorical environmental imperatives' and unable to 'represent future generations, non-human species and everything else that has no political voice'. Sustaining, if not enhancing and expanding, current consumer

lifestyles, which is the default setting of liberal democratic political systems, is possible, as Blühdorn (2013: 30) contends, 'only at the cost of increasing social injustice and accelerated environmental exploitation'. The interest group politics at the heart of liberal democratic systems of governance is not compatible with the environmental imperatives required to address the climate emergency and biodiversity loss. Liberal democracy, prioritising individual self-interest, unfettered consumer choice, and personal ownership, and the ecologically unsustainable global capitalist economic system it has serviced and depends upon, is where the problem resides (Shearman and Smith, 2007).

Environmental justice and Levinasian ethics

Key features of capitalism, notably perpetual pursuit of economic growth, an overly expansive consumer culture, and increasing appropriation of finite natural resources, have led to long-term, unintended, seemingly irreversible, detrimental processes of transformation affecting the Earth's climate, biodiversity, and ecosystems. In addition, the globalisation of capitalism has led to increasing disparities in wealth, income, and ownership of productive resources, concentrated in fewer and fewer hands. In respect of wealth one estimate suggests

'the bottom half of the global population own less than 1 percent of total wealth. In sharp contrast, the richest 10 percent hold 88 percent of the world's wealth, and the top 1 percent alone account for 50 percent of global assets' (Donald and Martens, 2018: 41-2).

In their response to such consequences Magdoff and Foster argue that to allow for poorer countries to grow their economies and increase their wealth overall global economic expansion needs to be reduced, if not curtailed. Replacing the current unsustainable form of modernity, driven by global capitalism's pursuit of endless accumulation, by an alternative sustainable form of development will mean replacing the pursuit of seemingly limitless material and experiential consumption for a growing global consumer class by a far more materially modest and simpler way of life where there is '*enough* for everyone and no more' (Magdoff and Foster, 2010: 15; Schor,

2011). To begin to move towards this alternative the logic of capitalism, the organisation of productive activity in terms of private ownership, capital accumulation and market forces, has to be more openly challenged, its detrimental social and environmental consequences made explicit, and the prevailing mode of production and consumption replaced. In turn, a basic presupposition of liberal democracy, notably that benefits are promised and/or accrue to current generations of citizens, needs to be challenged and overturned in preference to 'those who do not vote because they do not yet exist (or live in different countries or are not human)' (Di Paolo and Jamieson, 2018: 420). This will be very difficult to achieve and will necessitate 'new forms of democracy... with emphasis on our [ethical and environmental] responsibilities to each other, to one's own community as well as to communities around the world' (Magdoff and Foster, 2010: 16), including other-than-human communities with whose fate our human existence is inextricably articulated.

The action that needs to be taken is revolutionary in form, in scale and scope, a radical reappraisal of longstanding and deeply embedded assumptions and practices in respect of modern forms of life, of economic production and consumption, and a recognition of the frequently occluded and/or insufficiently regarded complex relationships and essential interdependencies between species and ecosystems (McKie, 2019). What is required is an overturning of the priority accorded to current conceptions, expressions and enactments of national and individual self-interest in preference for environmental ethics, an ethical care, concern and responsibility for and towards *all* others, the constitution of an ethical foundation to a global-political re-ordering of life that is inclusive of not only 'human others... but also other than human persons such as other animals, plants, rocks, and other entities' (Davy, 2007: 39) because, as we know, our fates are inextricably interconnected. Consider as one pertinent example the growing concern over the global decline of biodiversity, including 'the decline in health, and in numbers, of pollinating insects', a taken for granted 'labour force', which is inextricably associated with food crop production, with anthropogenic 'business as-

usual' (Marshman, Blay-Palmer, and Landman, 2019: 1; see also FAO, 2019; IPBES, 2019; Hallman, et al 2017).

In this context, Barbara Davy has proposed developing Emmanuel Levinas's notion of the primacy of an 'ethical responsibility towards the other' (Levinas and Kearney, 1986: 29) beyond the proximity of face-to-face relations between humans, 'beyond the interhuman toward a Levinasian environmental ethic' (Davy, 2007: 40). In outlining the possibility of extending the ethical reach of Levinas's work to nonhuman and other entities Davy argues that what is required for 'interspecies ethics is not a transcendence of animality or nature, but a transcendence of anthropocentrism' (2007: 46). What is proposed is an ethical-political governing of life that encompasses species relations and the environment and in that sense 'is already a question of justice' (Davy, 2007: 45). It is environmental ethics as 'first philosophy' or 'ethics for a more than human world' (Davy, 2007: 48) that is implied, the need to be actively engaged and vigilant in respect of ecological concerns such as climate change and biodiversity, exercising responsibility as 'an incessant watching over of the other' (Levinas and Kearney, 1986: 30), where the other encompasses human and nonhuman animals, insects, plant life and the environment we all share and depend upon.

What is being invoked here is the need to move away from the differentiation or separation of human culture from a constituted 'nature', away from a reduction of the Other to the status of possession, resource or commodity for human exploitation and use, to a recognition of our (human animal) responsibilities and ethical obligations towards the Other. Humans are called to responsibility by nonhuman others, as Davy has noted:

'Is it not our possession of the world in a very literal sense that is called into question by nonhuman others? Our possession, control, pollution and usurpation of the whole planet is called into question by the expressions of nonhuman others' (2007: 59).

Levinas's thought provides an appropriate foundation for 'critical environmental reflection'

necessary for the generation of a policy discourse and practice of environmental or ecological justice that is not diminished by or subservient to anthropocentric assumptions prioritising human rights and entitlements above those of other species (Nelson, 2012: 131; see also Kopnina, 2014: 7).

Concluding remarks: listening to the science, speaking for the cosmos

In his discussion of the positive possibilities that might as 'side effects', through processes of metamorphosis, emerge from the potentially catastrophic character of the global climate risks of industrial capitalist modernity, Ulrich Beck (2016: 37) provides an opening, a clearing, 'to rethink fundamental questions', but the rethink needs to be more expansive and inclusive. Beck's (2016: 35) observation that 'Living in suicidal modernity (capitalism), the black box of fundamental political questions is reopening' reflects how many critical analysts view the current situation. However, his response to the question 'Who speaks for 'the cosmos'? (2016: 35) ultimately falls short of a rethinking of the fundamentals and does not generate an understanding of the cosmos as worldly life inclusive of all species, living beings and matter. More than humanity needs to be represented. It is not enough to speak for one's own kind. Speaking for the cosmos means giving voice to human and nonhuman animal species, plants, rocks and other entities (Davy 2007). As Donna Haraway (2018: 102) has recognised, 'There can be no environmental justice or ecological reworlding without multispecies environmental justice and that means nurturing and inventing enduring multispecies — human and nonhuman — kindreds'.

Given the failure to date of national and international political institutions to respond effectively to scientific expertise on the climate emergency and loss of biodiversity and ecosystems, the prospect of what Timothy Mitchell (2009) calls 'carbon' democracies making the necessary multilateral, cooperative, long-term commitments to radically reform and regulate social and economic life to contain climate change and make possible a sustainable future is, at best,

in the balance. Scientific evidence and cautions about the environmental consequences of fossil fuel use and rising levels of CO_2 emissions have been accumulating for many decades. The twenty warmest years have occurred in the past twenty-two years, Arctic sea-ice and the Greenland ice-sheet are melting faster than anticipated, oceans are warming, and sea levels rising, yet global fossil fuel extraction, economic production, and consumption are continuing to increase, as are CO_2 emissions, to a record high in 2018 (Ritchie and Roser, 2019; UNEP 2018). As Charlie Gardner and Claire Wordley caution, the warnings scientists have provided on the climate and ecosystem crises have not led to effective forms of political action and continuing along 'current business-as-usual pathways [will mean] global heating will cause a temperature increase of 2.0-4.9C by 2100' (2019: 1271).

We have the scientific evidence. Images of the transformation of the planet associated with global warming proliferate in news media and online. We see increases in the melting of ice and glaciers in the Arctic and Greenland; droughts across Southern Africa, the Sahel region of Africa, southern Asia, the Mediterranean, and the U.S. Southwest; wildfires in Western US, Europe, Bolivia, Brazil, Australia and Siberia; extreme weather events, coastal and river flooding around the world; and increasing signs of the damaging impact on human and nonhuman animals, biodiversity, and ecosystem services. What is required is global agreement on concerted courses of action to promote the possibility of containing climate change, in particular 'a massive global mobilisation of resources… in the coming decade to build a zero-emissions industrial system' (Spratt and Dunlop, 2019: 10), along with mitigation measures, adaptation of infrastructure, and importantly remedial action to deal with the consequences of our carbon legacy. We are already locked into significant increases in global temperature with consequences for all species, for human and nonhuman animal communities. The impact of our past and present fossil-fuelled modern lifestyles, our CO_2 footprint, will continue to affect climate conditions and surviving human and nonhuman animals, insects, plant life and their shared environment and ecosystem services

long into the future. As David Archer (2009: 1:11) acknowledges:

'The climatic impacts of releasing fossil fuel CO_2 to the atmosphere will last longer than Stonehenge, longer than time capsules, longer than nuclear waste, far longer than the age of human civilization so far… The lifetime of fossil fuel CO_2 in the atmosphere is a few centuries, plus 25 percent that lasts essentially forever.'

In geological time scales we are effectively at the beginning of anthropogenic climate change which will continue for as long as CO_2 and other greenhouse gases are released into the atmosphere, with the heating effect from emissions lasting 'effectively forever' (Inman 2008: 158). Democratic political decisions are generally conceived, planned, and implemented to comply with and be effective in relation to electoral time cycles and the interests of existing electorates. However, in respect of the consequences of climate change the temporal frame of reference and interests considered have to be significantly extended in duration and scope to encompass the wellbeing of generations of people yet to be born, as well as citizens from other countries, and multiple species of nonhumans and ecosystem services. Can democratic political institutions summon the political will to respond urgently and effectively to the climate emergency by implementing policies to reduce carbon emissions to net zero well before 2050? To do so it will be necessary to radically transform the fossil-fuelled growth dependent global economy, curb consumerism, and implement ethical environmental policies promoting environmental justice for all species.

Given the gravity and urgency of the global climate emergency, the ponderous performance and at times counterproductive pattern of governmental and corporate responses, mitigation of and adaptation to runaway climate change rather than a future restoration of some level of ecological sustainability may be the best that can be achieved. The public has already responded to the global climate emergency, biodiversity and ecosystem crises with marches, strikes, and acts of civil disobedience and nonviolent resistance. The scale and scope of the

transformations necessary to reduce emissions to zero, promote environmental justice, and increase the possibility of sustainability, require rapid radical political and economic changes that will only be achievable by involving the public in climate emergency policy responses via citizen assemblies, educational institutions, local councils and communities, and relevant campaign organisations.

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The problem of democracy in the ASEAN Creative City: the cases of Chiang Mai, Bandung, Cebu, and George Town

Phitchakan Chuangchai

Article Information

Abstract

The 'Creative City' is a global policy trend that has, evidently, been adopted by many cities around the world. At the beginning of the putative post-industrial era (early-1970s) major cities across the Europe and USA faced significant economic and social transition, specifically when their economic core was progressively hollowed out as industrial production migrated to Asia or to other, cheaper, regions. There were demonstrable urban impacts of this transition, including poverty, crime, and a generalised underdevelopment. The Creative City discourse dates to this period in the UK, when cultural consultants like Charles Landry and Franco Bianchini recognised the conditions of urban change and the potential role of culture as a framework for policy intervention. They proposed new strategic approaches, which evolved and became influential within international policy spheres — British Council, UNESCO, and regional networks, such as ASEAN. In the Southeast Asian region, the Creative City discourse was welcomed by the Association of the Southeast Asian Nations (ASEAN), and a significant number of the major cities of the associated ten countries are currently using the Creative City as a model or framework for economic growth, social progress and cultural development (and as a broader means of internationalisation, cultural diplomacy and benefitting from UN-level development framework participation). This paper serves to consider the specific strategic manifestations of the Creative City idea and investigate its policy and ideological function in specific exemplar ASEAN cities.

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Introduction: the geo-political framework

In April 2017, ASEAN held the first ASEAN Creative Cities Forum and Exhibition in Manila (Philippines) as a part of ASEAN 2017 Business Event. It was convened to discuss the use of culture and creativity as a driving force of sustainable development (principally through urban regeneration and infrastructure development, growth and innovation, but also ASEAN's socio-political aims of promoting social cohesion, citizen well-being and inter-cultural dialogue. Key parties already interested in the policy areas of Creative Economy were present, and through presentations and networking they shared their experiences and initiatives. How then did ASEAN actors adopt the Creative City as a development model for the region, and meet the expectations of the general political consensus on sustainable and inclusive development? Though ASEAN members (and not all) have just started using the Creative City discourse formally, some ASEAN cities have made huge progress. This paper looks at four exemplar cities: Chiang Mai (Thailand), Bandung (Indonesia), Cebu (Philippines), and George Town (Malaysia). These four cities formed a network within ASEAN in 2014 called the Southeast Asian Creative Cities Network (SEACCN), aiming to become the platform for policy development in the region.

The argument of this article is that the Creative City has become a 'fast' policy for ASEAN, regarded as a user-friendly tool for other, non-creative, policy aims. The fact remains, however, that cities are socially complex, and different, and so pertinent to this situation is the many scholars who have assessed the travel of such Western policy notions, (as 'fast policy' (Peck, 2005), 'Xerox' approach (Pratt, 2009), 'cookie-cutter' (Oakley, 2004), and so on). As a phenomenon of the now well-researched broader policy 'transfer' process, the Creative City has paradoxically been deployed without a thorough approach to culture itself — to a cultural audit of local assets, to cultural infrastructure, participants and producers, facilities and funding, and so on; and so this raises the suspicion that it has been co-opted as another policy instrument in the spectrum of urban economy development tools, hollowing out its actual purpose (and thus ultimate efficacy as a

policy for culture). This article thus asks if the Creative City discourse has become a veritable Trojan Horse of neoliberalism in ASEAN, and in converting culture to economics, there are consequences. These consequences typify the implications of withdrawing or exploiting 'culture' in any society — that the development of democracy and civil society (of public life broadly) will be adversely impacted. Brenner and Theodore's (2002) framework of 'Actually Existing Neoliberalism' is useful in providing a range of specific criteria for the veritable 'neoliberalisation' of culture and society, specifically as facilitated by urban policies. This article's purpose is to assess neoliberalism as a process in four ASEAN cities and determine whether a substantive interconnection (not necessarily causal) can be posited between neoliberal processes and the features of urban life as they have emerged within the Creative City context. This is then discussed in the context of democracy and democratisation, or the general horizon of political expectation in each of these cities' host countries (Thailand, Indonesia, Philippines, Malaysia) as each national government does progressively confirm (and purport to conform) to the normative international principles of social and well as economic sustainability as defined by the United Nations.

The research literature formative of the Creative City discourse is broad and cannot be summarised here. Nonetheless, Charles Landry's *The Creative City: A toolkit for urban innovators* (2000, 2008) must be cited as a seminal reference point. Landry (2000), argued that creativity was a necessary framework for post-industrial urban development, and, like his younger American counter-part Richard Florida, knowledge, problem-solving, education, information and new technology were central. However, both Landry and Florida (the former arguably more than the latter) posited social and 'human' development as central to urban and city development (i.e. economic development more broadly).

For Florida, his controversial notion of the creative class has a high impact on the Creative City notion as he argues that the creative people are drawn to places with certain characteristics which he terms 'the 3T's', which includes technology, talent, and

tolerance. With this, Florida (2002) argues that *place* has become crucial than ever as it enables (i) the clustering of creative industries, and (ii) the densification of creative people. When firms cluster, it provides the positive benefits of co-location or 'spillovers' (Florida, 2005, p.29); and creative industries, more than most, require face-to-face contact and a diversity of individual talents (Florida, 2008). Both Landry (2008) and Florida (2002, 2005, 2008) maintain that such are now essential for post-industrial economic growth, which is centred in cities, and cities are the most effective environments for individual ingenuity, development and collaboration. Landry's (2008) concept 'creative milieu', while largely untheorised, is effective in representing the social conditions for urban culture of creativity (why some cities are stimulating places of possibility, and others are not or are even the opposite).

Why Asia?
The emergence of the Creative City discourse in Asia was, in one sense, precipitated by one of the biggest crises in Asian history — the Asian financial crisis of 1997. In the 1990s, the government of Thailand, Indonesia, Malaysia, South Korea, and the Philippines, gradually relaxed control over the domestic movement of capital in order to attract foreign direct investment (Steger and Roy, 2010). However, as the latter half of the 1990s turned, the fluidity of capital and its motivation by transnational capital interests, was brought home when Thailand was hit by currency speculators and the value of the Baht (and its annual growth rate) fell so dramatically, social consequences were experienced at every level (from education to medical care). Soon after fell other Asian economies, Indonesia, Malaysia, South Korea, Hong Kong, and Singapore, and while many of these rebounded on the strength of their manufacturing, cheap labour costs, and exports, an economic 'growth' rationale became pervasive across the political spectrum, Left and Right. However, they also absorbed the emerging consensus (cf. UN-Habitat and its role in the Sustainable Development Goal No.11) that cities are becoming the principal drivers of economic growth. And while a traditional industrial base of agriculture, manufacturing and natural resources,

predominate in each ASEAN country, they each became open to Western market-based innovations, such as the use of new technologies, and the spillover effects of small-scale innovative firms, cultural heritage and tourism, and, specifically, the 'creative industries'. The four case studies in this article considers this latter adaptation.

Each of these cases is based on primary empirical research. For each city, desk research was conducted on the socio-economic history of the city, under what economic conditions each city has adopted and adapted the Creative City paradigm, and what rationales, developments and policy-facilitated actions have emerged. Information has been garnered from various news, government and investment agencies' websites, official publications (of government and its agencies, or public institutions), and secondary sources such as academic journal articles. These sources were assessed within a narrative critique on the evolution of neoliberalism, to explain and link the urban changes that cohere with Creative City paradigm. The research material was adapted to a tabulation of neoliberal impacts – that is, from the aforementioned article 'Actually Existing Neoliberalism' by Brenner and Theodore (2002). This allowed the argument a trajectory, in terms of the ways Creative City urban development proceeded in relation to each of the countries' political orientation in developing its civil society and democracy.

(1): Chiang Mai and participation
Banyan (2007) states that "The concept of participation implies involvement in public decisions, as distinguished from other forms of community involvement. Public decisions are those in which the entire community has a stake in the outcome" (p.2) The broad participatory mechanisms that would ensure the fairness, openness, competence and legitimacy in a democratised society are, classically, electoral participation, direct forms of participation, citizen-government interactions, group participation, and activism and dissent (ibid). Two mechanisms that are relevant to the Creative City discourse as it has become a policy framework in the Thai city of Chiang Mai are citizen-government interactions

and group participation. The mechanism of group participation will be assessed first, as this relates to the central mechanism of the governance model of Chiang Mai's creative city making operations. Group participation takes place when "individuals feed their preferences through an organisation or body that acts as a mediator to express their interests" (Banyan, 2007, p.4), and while group participation allows the representation of marginal or disadvantaged voices, this matter is less obvious and perhaps incurs a greater political risk.

There are three issues we need to take into account: "(i) Groups are not equally accountable to all citizens but primarily respond to their own constituencies, (ii) groups are not necessarily guided by 'community' principles, and (iii) not all community interests are represented by groups" (Banyan, 2007, p.4). These are taken as assumptions in our assessment on citizen-government interaction in Chiang Mai. We assume that in order to ensure citizen representation, the government must interact with citizens in some specific capacity, notably in ways that inform the making and implementation stages of policy. This might be public meetings, hearings, citizen surveys, consensus-building processes, or any other method that de facto defines citizens as a 'public' with rights and interests and involve these in the making of political decisions pertaining to the sphere of those interests (Banyan, 2007, p.3). The criteria of assessment by which participation in the Chiang Mai Creative City will be conducted will be drawn from the above. The first criterion is the visible inclusion of the public interest — and how this is involved in important urban decisions concerning the city's culture (i.e. the UNESCO Creative Cities Network, the UNESCO World Heritage Site Status). The second criterion is citizen-involvement — whether priorities, processes and procedures pertain to the policymaking and implementation stages (such as consultations, hearings or surveys). These criteria are basic with regard to our concept of democracy, and obviously, do not attempt to ascertain the extent or depth of democracy or democratisation that the Creative City framework might cultivate. It will, however, offer a conceptual framework to identify the integrity of democracy in cultural policymaking by assessing the extent of public participation in Chiang Mai.

Participation and the Creative City
From the outset, the Creative City discourse has awarded significance to 'participation' broadly (both culture and social) — implied in the repeated 'collaborative' dimensions of city-development as lauded by the Creative City's key theoretical architects – Charles Landry, Richard Florida, and John Howkins. However, 'participation', which essentially a concept traditional to liberal democracy, is also articulated in broad cultural and social terms that do not necessarily require processes of democracy or the institutional apparatus we may expect of democratic societies.

In Landry, Greene, Matarasso, and Bianchini's *The Art of Regeneration: urban renewal through cultural activity* (1996), we find a typical example of an emphasis on the supposedly clear benefits of participation in the form of participatory arts programmes. Argued is the point that participation offers "a route to personal development which suits how people learn about communication, personal effectiveness and self-reliance, and have shown their attraction for those who have found conventional education opportunities inappropriate" (Landry et al., 1996, p.31). As a general statement then, participation enhances social cohesion, improves the perception of the local area, reduces behaviour inimical to social cohesion, develop self-confidences in citizens, promotes an interest in maintaining the local environment, and further, a culture of collaboration emerges in the form of sectoral partnerships, organisational capacity, and a clear vision of what is possible in terms of actual future development (Landry et al., 1996, p.31-33). Landry's expanded re-issue of the seminal statement The Creative City (2000) tends to 'frame' these assertions with a form of Human Development, whereby the most critical resource a city possesses is its 'people', in terms of "Human cleverness, desires, motivations, imagination and creativity", which are gradually "replacing location, natural resources and market access" as 'urban resources' — for, "The creativity of those who live in and run cities will determine future success" (Landry, 2000, p.51).

Richard Florida's 'creative class' thesis, noted above, obvious proposes the emergence of a new category of social class, his theory of industrial development does prioritise people in terms of their individual aptitudes, capabilities and aspirations. Moreover, while many have framed Florida's creative class in terms of free-market neoliberalism (Peck, 2005, etc.), he nonetheless maintained an emphatic series of claims on the necessity of certain social and urban conditions. In his latest popular book, *The New Urban Crisis: gentrification, housing bubbles, growing inequality, and what we can do about it* (2017, p.xxi), Florida returns to these conditions and indicates that the "enduring success in the new people-driven, place-based economy turned on doing the smaller things that made cities great places to live and work — things like making sure there were walkable, pedestrian-friendly streets, bike lanes, parks, exciting art and music scenes, and vibrant areas where people could gather in cafés and restaurants." He continues, "Cities needed more than a competitive business climate; they also needed a great people climate…" (Florida, 2017, p.xxi). While the social and urban conditions of human creative flourishing were always embedded in his theory, the term 'people climate' was quite new and quite untheorised.

As for John Howkins' theorisation of the Creative Economy, he does make significant mention of the effect of the new economic change in people's lives, including workplace, homes, and cities (Howkins, 2001, p.viii-xiv). And insofar as the creative economy is an urban phenomenon, Howkins states that the heart of the creative transformation of industry is a general determination for people to want to think of new ideas that stimulate others, and this could not happen without an industrial-urban economy that facilitated optimum participation, and a consequent shaping power in cities (Howkins, 2001, p.ix).

Thus, Landry, Florida and Howkins together indicate a widespread assumption on participation, in its cultural, social and urban senses. Consequently, the 'fast' policy of creative city-making has assumed rhetoric of participation embedded within it, which, by implication involves normative democratic expectations on

the role of citizens (not simply consumers) in shaping their social environment of habitation and work.

Participation in Chiang Mai Creative City
In Chiang Mai, we find three organisations central to the Creative City policy project: Creative Chiang Mai, Chiang Mai City of Crafts and Folk Art, and Thailand Creative and Design Centre (TCDC). Creative Chiang Mai was the first organisation to advocate the Creative City policy concept in the city and to work with the Chiang Mai University Science and Technology Park; their advocacy emphasises innovation and technology. Their industrial framework is not simply a generic 'creative industries' but more specific 'design industry' as exemplified in the annual Chiang Mai Design Awards (CDA, established in 2012). Aiming to promote innovation and creativity together, the range of design categories the award demonstrates an attempt to maintain a specificity of purpose along with a recognition that 'design' as an 'industry' or 'sector' is actually hybrid and contains some very different professional areas (from graphic design to architecture). Chiang Mai City of Crafts and Folk Art is a network association whose central purpose was to support the application of Chiang Mai to membership of the UNESCO Creative Cities programme (awarded October 2017). The TCDC is supervised by the Royal Thai Government's Office of Knowledge Management and Development, and founded in 2004 is a central think tank, advocacy and commissioning centre that is, again, spearheaded by the 'design industry'.

Governance and policy implementation
A central dimension of participation is some measure of involvement of sector professionals or the general public in decision-making – organisational and policy-based. This section demands a comment on the concept of governance in Chiang Mai as it has been subject to the forces of neoliberalism along with the rest of the public or governmentally funded institutional sector (Bevir, 2007, p.364-380). Governance is a complex and fragmented pattern of rule composed of multiplying networks (ibid) – often institutions responsible for devolved powers. Our central research question is how, if at all, governance in the city is facilitated by the new

Creative City policy discourse? Is there reason to infer or assert that it has? The neoliberal narratives of free market, civil society, and corporate power, suggests that 'governance' itself is essential to a capitalist social order, central to whose concept of organisation is not, logically, collective cooperation but individual self-interested action directed on the basis of market norms and calculated cost-benefit ratios aiming for profit or at least utility maximisation (Bevir, 2007). Neoliberalism is characterised by marketisation and the 'new public management' (NPM) inculcation of corporate strategic management as a template for public institutions and/or social services (ibid). This section argues that the model of cultural governance in Chiang Mai, as exemplified by the Creative City policy development is organisational participation without citizen involvement.

The central agencies of governance in Chiang Mai's Creative City are cited above. As Costa, Magalhães, Vasconcelos, and Sugahara note (2007, 2008), the UK's Department of Culture, Media and Sports' (DCMS) well-publicised definition of 'creative industries' and subsequent market-oriented development policies made an impact worldwide (Costa et al., 2007, p.127), and which continues through the British Council's creative cities scheme as well as a multitude of national arts councils, Western consultancies and indigenous think tanks like Thailand's TCDC. TCDC's influence is national, Chiang Mai City of Crafts and Folk art is very much a local or at best regional influence, and Creative Chiang Mai is a city-based non-profit organisation. Costa, Magalhães, Vasconcelos and Sugahara (2008) propose three different axes of analysis for a study of governance: national versus local/regional, policy intervention versus the influence of non-policies, and public versus non-public projects (See Costa et al. 2008, 2009).

Costa, Magalhães, Vasconcelos and Sugahara argue that for creative city policies, the regional/local level of governance is most effective as it impacts dimensions of the urban economy not encompassed by national models of governance. The branch of TCDC in Chiang Mai is suggested as evidence of this: as interviewed, the director of the TCDC Chiang Mai stated that he recognises the distance between the organisations programme and the social life of the city (and, the character of the projects and identity of the city), and that was in part its strategic role as national government advocate (Buakeow, 2017). This further suggests that Chiang Mai City of Crafts and Folk Art's and the Creative Chiang Mai projects lessen the sense of distance between cultural organisations and the social life of the city. As local organisations, projects run by these two actors are more connected to the social life of the city. The craft industry is a well-known industry in Chiang Mai. Creative Chiang Mai offers 'handmade— chiangmai' and 'salahmade' branded projects with online platforms to connect artisans and buyers. They present stories and procedures of artisans and craft products (handmade-chiangmai, 2019). This way, artisans are offered a more extensive network and connection, rather than just passing the middleman.

The axis of 'policy intervention versus non-policies' (that is, without explicit policymaking for the development of creativity in cities: Costa et al., 2008), all three Chiang Mai organisations bear some influence on the shaping and making of the city as a creative city through the force of their institutional presence, networked professionals, projects and creative outputs. Firstly, the Creative Chiang Mai influenced the Chiang Mai government to apply for the UNESCO Creative Cities Network. Presenting endless opportunities on the economy and urban development by using creativity as a driving force, Creative Chiang Mai has injected the creativity discourse into the urban scene. Not long after the failed application of Chiang Mai as a 'design' city to the UNESCO Creative Cities Network, the Chiang Mai government seized the opportunity to 're-invent' the opportunity by appointing the Chiang Mai University's Faculty of Fine Arts to work on the application for the UNESCO Creative Cities Network as a 'crafts and folk art' city. The city finally gained the title in 2017. Moreover, these creative organisations have influenced the use of creativity discourse in the city by hosting events that have impacted the city. The annual 'Chiang Mai Design Week' by the collaboration of these three organisations, private and government

sectors in Chiang Mai is a good example of how the creativity discourse has been spread in the city. It is a week-long event that showcases mainly crafts and design industry. Apart from regional and international audiences, people and the social life in Chiang Mai are influenced bits by bits by this event.

The last discussed axis, 'public versus non-public projects' can be qualified by the observation that "Besides…governance models mainly based on public projects, there are governance strategies that are the outcome of non-public will (even if they are in part publicly funded)" (Costa et al., 2007, 2008, p.409). These projects could be "the product of non-profit organisations such as associations, foundations or agencies funded with public and/or private money" (Costa et al. 2008, p.409). Furthermore, they maintain two spheres of organisational activity: (i) the promotion of a specific creative activity/genre or sub-sector of the creative industries; and (ii) the promotion of a geographic area (region, city, quarter, district, borough, and so on), often in terms of the diversity of creative activities and industries located therein. This governance model pertains to the Chiang Mai City of Crafts and Folk Art and Creative Chiang Mai, quite obviously. Both are promoting specific genres or professional areas of creative industry (the craft industry, the design industry) but these areas are defined as hybrid given the spectrum of activities in these categories within the bounds of the city. Also, both participate in the identity-enhancement and promotion of the city as a creative location. Therefore, Creative Chiang Mai and Chiang Mai City of Crafts and Folk Art can participate in city branding, whereas it appears to be harder for TCDC.

Policy implementation
Policy implementation is a critical stage within policymaking itself and not simply the 'application' of policy (Bardach, 1977). Implementation is so often where the policy becomes visible in the public realm, open to reflection, feedback or criticism, and if the policymaking process is subject to democratic accountability, review and assessment of outcomes will be essential to the continuity of implementation (whether to the refinement or amendment of policy, or of strategy or the programmes by which policy is activated, or amendment and change. A question emerges as to whom, and on behalf of whom (representation) implementation takes place. Who is involved? In the previous section, the second 'axis' of Costa et al. indicates that the governance model in Chiang Mai belongs to a 'non-policies' one, which makes it harder to ensure the involvement of citizens in the policy implementation stage. The dominant three Creative City organisations all claim to be acting on behalf of the people of the city, but this is simply a generalised notion that includes residents, visitors, workers (of all categories).

The example of the application to the UNESCO Creative Cities Network by the Chiang Mai local government in the previous section demonstrates how policy is made in the city. Buzz words or trends that have grabbed the local government's attention make it into the urban policy of the city without much citizens participation. People participate in the policymaking of the city are those in the government, in organisations which include people in higher social status.

A further matter for the critical scrutiny of implementation is the 'organisational field' of creative organisations in the city. Do the organisations cooperate, and work in an interconnected or strategic way, or are they quite disconnected from each other? If the latter, then the potential for overlap, competition, cross-checking or collegiality may raise questions concerning efficiency and accountability in the public realm of the city. From the interviews, this has been proven by the three organisations themselves that they work quite separately in strategy and projects planning (Boonyasurat, 2017; Buakeow, 2017; Venzky-Stalling, 2017). In Chiang Mai, the implementation of the Creative City policy take place in ways that can be defined as both 'top-down' and 'bottom-up': TCDC Chiang Mai can be described as top-down, while Chiang Mai City of Crafts and Folk Art and Creative Chiang Mai happen bottom-up. Decision-makers in the former are national, whereby the regional city-based operations are implementations of national policy programmes (and effectively involve the only relation between central and local government).

Neoliberalism in the city

This paper argues that the adoption of the Creative City discourse in Chiang Mai is a Trojan horse of neoliberalism as it causes the problems of disempowerment, disenfranchisement, marginalisation, and inequality. Firstly, the governance model of Chiang Mai Creative City has facilitated an issue with disempowerment. Disempowerment leads to the lack of civil society where independent or entrepreneurial or social-based agencies or people are not given opportunities, resources and incentives that they should have been given. The creative industries and urban development in Chiang Mai are reserved for a limited number of specialist or stakeholder agencies. With no shared, representative, decision making or action that represents the whole city, people are not involved in the decision-making process as discussed in the previous section. It is evident that selected members of the three organisations are on the higher social class, for example, university lecturers, business people, politicians, government officers, and so on. Many of them are not resident in the city; however, the fact that Chiang Mai is a rapid growing secondary city of Thailand, this attracts these groups of people. Also, when this kind of policy discourse is pushed forward, it is difficult for locals to resist. Many creative and cultural clusters in Chiang Mai, for example, Bor Sarng, Baan Tawai, and Wat Gate, have been automatically included in the branding process that they have become commodified.

Secondly, the issue of disenfranchisement has sprung from the adoption of the Creative City discourse in Chiang Mai. The previous discussion shows that the adoption of the discourse and the process of policy implementation did not allow the public to be involved as much as they should. The ongoing discourse of the Creative City in the city makes some groups of people do not feel involved with the direction of the development in the city. Even though the projects from the three creative city organisations seem to be for locals, they do not base on community-based interaction or localisation. There is no mechanisms or schemes that enable the recognition of other city groups or create active involvement in creative city activities. The activities from the Chiang Mai City of Crafts and Folk Art mainly cater to the need of the craft industry. This works out the same for the Creative Chiang Mai and TCDC where their main targets have become the prioritised group of Chiang Mai's urban development. This does not mean that the organisations should provide projects without specific groups of audiences, but the governance model of the creative city making does not provide a framework for identifying and contributing to the non-creative or destructive aspects of the city – like excluded people, young people in trouble, crime or drugs. People who do not feel involved become non-active members of the community, and this could lead to anti-social behaviours. The Creative City discourse, as a notion from the West, appears as alienated to locals as commented by the TCDC director, Buakeow (2017). People's lifestyles are not taken into account; thus, the related projects had not been participated by a wider range of people of the city.

Thirdly, marginalisation is implied by the previous two issues. The problem of marginalisation can be viewed in two domains: social and cultural. Socially, the Creative City discourse in Chiang Mai creates cultural elites which reproduce a social hierarchy. People who are involved in the making of Chiang Mai as a creative city hold power and gain even more power through the process. Without a balance from local and central governments, the city has turned to be a place for certain groups of people – those who 'belong'. These people are then placed on the top step of the social ladder. Even when local artists are involved in projects, they would not really belong in this reproduced social class or a so-called 'creative class.' Nimmanhaemin, the art cluster in Chiang Mai, is one of the examples of this social marginalisation. The area has been commodified that it has turned to be a place mainly for business purposes. Only established artists and big businesses survive in the area, and this has diminished other forms of arts and creativity as this place has turned out to be a place for specific groups and tourists. For cultural production, there will be a marginalisation of industries as the Creative City discourse limits the field of creativity to small niche areas of specialisation – not broad-based industrial development, where (a) creativity

can impact all areas of a city's industry, (b) creative labour can be a training for transferable skills and employment prospects, and (c) where labour is interconnected with training and educational institutions. In Chiang Mai, the niche industries that are promoted are the craft industry and the design industry. People in these industries are developed to be fed into the industries. This creates a trap, as people do not grow and develop to their full potential. They are only supported to be a function in the machine of production. It is evident that areas in Chiang Mai have been unevenly developed through the use of creative city and creativity policies as guided by projects and developmental schemes such as the UNESCO Creative Cities and the UNESCO World Heritage Site. It is a facet of neoliberal ideology that convinces workers that they are privileged and one day will find prosperity through their creativity. All in all, these above problems above could ultimately emerge as a crisis of inequality (or at least, exacerbated inequality). With the reproduction of social class, niche markets, and lack of democratic process, inequality will emerge.

(2): Bandung and 'city re-representation'?

City 're-representation' is another central feature extrapolated from Brenner's and Theodore's (2002) criteria of neoliberal localisation. Re-representation is a discursive mechanism of neoliberal localisation, which like others, comprises moments of destruction and creation — the existing unfortunate or ineffective 'image' of a city (where, for example, actual economic realities of urban disorder both socially and economically) are emphatic, are replaced by characteristics more constructive of a new economic order and its ideologies. In Bandung, the entrepreneurial discourse has been mobilised to good effect, promoting policy rhetoric of revitalisation, reinvestment, and rejuvenation through creativity and industrial innovation.

The concept 'representation' is recently, commonly deployed with critical urban analysis to identify three related processes (Castiglione, 2007). First, representation suggests the forms through which political action (or, for our purposes, policy implementation) takes place in the context of a 'principal-agent' relationship —

where, for instance, a government can be said to act in the interests of its people (ibid). Second, representation identifies the place, or places, through which political power can be exercised responsibly and with a degree of accountability, thus enabling citizens to have both a degree of influence and some control over such power (ibid). Third, representation determines how political voice can be embodied with a certain degree of equality and recognition (ibid). These three processes suggest what a city should concern in terms of the re-representation of its image to ensure the equal representation of its citizens and protect their identities in the city and that their political power is exercised with a degree of accountability.

How cities are represented or represent themselves to themselves, or to others has been a matter of ongoing debate among urbanists. American professor Sharon Zukin forged a seminal line of criticism identifying how the representation of culture in cities is a powerful means of managing both cities and culture given how the latter is "a source of images and memories, it symbolises 'who belongs' in specific places" (Zukin, 1995, p.1). The Creative City discourse in Bandung has served in this way, with a form of a strategic brand for the city. Zukin further emphasised the "cultural power to create an image, to frame a vision, of the city has become more important as publics have become more mobile and diverse, and traditional institutions – both social classes and political parties – have become less relevant mechanisms of expressing identity" (1995, p.2-3).

Bandung's city 're-representation' begins with the work of the Bandung Creative City Forum (and its committees), who were tasked with forming a new 'image' for Bandung — in Zukin's terms, as "Those who create images stamp a collective identity" (Zukin, 1995, p.3). This was in harmony with the noted discourse of entrepreneurialism, that was disseminated by both national and municipal economic policy, whereas neoliberal localisation, a more dynamic market model was progressively adopted. Brenner and Theodore (2002) discuss a variety of now common neoliberal policy innovations, including place-marketing, enterprise and empowerment zones,

urban development corporations, new forms of local 'boosterism', property-redevelopment schemes, and so on. These policies, on critical analysis, are not autonomous innovations but are calibrated within a suite of public policy measures to coherent with national and local economic policy and to effectively support the establishment of what can be identified as neoliberalism in regions undergoing urbanisation, particularly cities. Therefore, it will be taken into account as the second criterion with which we will define Bandung Creative City. This will necessitate attending to the role of (i) people in power and (ii) the role of entrepreneurial discourse itself.

City re-representation and the Creative City
Our central interlocutor, Charles Landry, awards a strong emphasis on the re-representation of the city in saying "Most of us agree that cities should have clear identities and a sense of community, that they should be distinctive and true to themselves" (2000, p.72). In order to make that happen, the values and norms of the cities' diverse social or cultural groups must be recognised so as to develop a culture of actual 'representation' (in the political sense) and facilitate cultural sustainability, where people in cities are continually involved and responsible for the sustenance and productivity of the city (Landry, 2000). Landry and Bianchini together strengthen this general point in the 'working paper 3 for Creative City' indicators' that "A city may, however, be made up of a range of identities, sometimes rooted in different parts of the city, that express themselves in different lifestyles and thus the tolerance alluded to earlier is a key aspect of harnessing these identities so that they contribute to overall viability and do not cause fragmentation" (1994, p.26). This emphasises the interconnection between culture and the equitable representation of diverse citizens in sustainable cities, and where identity and distinctiveness are both important in the process of selecting for the core and peripheral culture in the tide of available information and ideas (ibid). Moreover, they can also provide a bond between people with different backgrounds and interests to cooperate for the common good of the city; however, "when identity and distinctiveness degenerate into parochialism,

introversion, chauvinism and antagonism to the outside world they may destroy the foundations of a creative milieu" (Landry and Bianchini, 1994, p.27) and this could have happened in the Bandung case when the Creative City discourse was adapted.

 'Representation' in cities for Florida is internal to his characteristic "3T's" of economic development: 'technology, talent, and tolerance' are necessary but, according to Florida (2008), not entirely sufficient for sustained economic growth. When discussing the locations that the creative class choose to live and work, he asserts that "Cities have personalities, too" and that "It is all well and good to know that place affects happiness, that the happiest communities tend to be open minded, vibrant places where people feel free to express themselves and cultivate their identities, and that these communities tend to foster creativity" (Florida, 2008, p.187). This projects the importance of a 'positive' representation to attract a certain group of people as he argues that creative people would choose a place in which to work and settle. This argument supports Landry's and Bianchini's view on the importance of identities in the making of a successful and sustainable creative city, and it can, therefore, be asserted that the aesthetics or visual "image" of a city's work in representation must be interconnected with urban policy and the material conditions of social life.

Concerning the extent of the relationship between creativity and economics, Howkins also identifies environmental conditions, where "[Creativity] occurs whenever a person says, does or makes something that is new, either in the sense of 'something from nothing' or in the sense of giving a new character to something. Creativity occurs whether or not this process leads anywhere; it is present both in the thought and in the action" (Howkins, 2001, p.ix). The relation between ideas and actions and how the agents and agency of thought and action are socially situated reinforces Landry's and Florida's point on the re-representation of cities as not simply strategic brand or destination marketing but as internal to urban planning.

City re-representation in Bandung

Like most of the Southeast Asian cities, the development of Bandung started from agricultural activities. After 1945, Bandung was developed as an industrial area to support the growth of Jakarta, the capital city of Indonesia. The Master Plan of 1971 planned for Bandung to become a metropolitan centre at the regional level; at the local level, the city is divided into several functional zones and residential districts. The northern part of the city is used for administration, education and tourism-related uses; the central part with commerce, tourism and cultural uses; and the southern part with industrial uses. Later on, the new Master Plan 1985 included three levels of planning, which are the city, district, and technical level. In 1999, the municipal government of Bandung established a strategic vision for the city under the slogan 'Greater Bandung 2020: Friendly and Smart.' In this policy rhetoric, the semantics of 'Friendly' refers to 'well-organised, safe, quiet, religious, clean, healthy, fresh, agro-based, interesting, natural, humanised, harmonic and prosperous,' while 'smart' refers to being 'dynamic, efficient, productive, creative and innovative.' From this basic characterisation of urban policy rhetoric, it is obvious that the municipal government defines the new image of Bandung's in term of urban planning outcomes, albeit broad characteristics of an urban utopia with optimum industrial functionality.

The leading organisation for the creative city-building in Bandung is the Bandung Creative City Forum, established in 2008. Prior to that, the British Council had played an essential role in establishing entrepreneurial discourses in the city by introducing programmes such as the Indonesia Young Creative Entrepreneur (IYCE) and the Creative Entrepreneur Network (CEN). One of the awarded winners of the 2007 competition was Ridwan Kamil who later formed the Bandung Creative City Forum and was also elected as a mayor in 2013 and ran for governor in 2018, instead of seeking a second mayoral term. The influence of the British Council in the city of Bandung has set a trend of entrepreneurial discourses in the city. It became clearer with the establishment of Bandung in supporting this trend

as the goals of the Bandung Creative City Forum are (i) promoting creativity, (ii) assisting in planning the improvements in city infrastructure as a means of supporting the development of the creative economy, and (iii) creating more creative entrepreneurs and communities. This has allegedly stamped the image for Bandung as urban projects and activities are done to support the goals of the organisation. When Ridwan stepped up as a mayor of the city, he gave an interview that he recognised the importance of the communities and he had tried to involve these communities in urban activities; however, the question remains, in Sharon Zukin's terms, "Whose culture? Whose city?" (Zukin, 1995, p.1).

Looking at the branding for the city of Bandung under the brand '.bdg' suggests the direction of the city re-representation. Brand .bdg emphasises on Bandung's three central potentials: people, place and idea (as the Bandung Creative City Forum argues that people and ideas offer social innovation and economic values). Place and ideas offer active and entrepreneurial communities, and place and people offer a built environment with business potential (Larasati, 2014). Entre-preneurial discourses have been injected to the city's brand; hence, the branding of Bandung under the Bandung Creative City Forum spreads the implication of individualism under the neoliberal ideology. This part has discussed the re-representation of the city from the city branding of the Bandung Creative City Forum. The next part will analyse emerging problems that happen from the re-representation process in Bandung.

What happened in Bandung?

When analysing the re-representation issue in the urban reality of Bandung, two main political issues emerge (i) people in power and (ii) the socio-political implications of the discourse of entrepreneurialism. To begin with, the establishment of the Bandung Creative City Forum happened with 50 independent members from across the creative industries' spectrum — the arts, clothing, fashion, music, urbanists, archivists, solicitors, engineers and many more. On the face of it, this allowed for the representation and recognition of the spectrum of communities of arts and culture in the city. However, the tacit branding of Bandung through an alliance of all the

institutional and official representatives of culture and creative industries is not necessarily as democratic as it seems: this small, select and quite specific professional grouping has created a tendency towards certain representations of value and social life. The development of Bandung's urban culture through urban development programmes like Simpul Institute, Bandung Creative Centre, Helarfest, Creative Entrepreneur Network, Kampung Kreatif, and the brand .bdg, has suggested that the core values of Bandung's cultural life are the values of those who belong to its institution-based and recognised discourses. Thus, according to our first criterion of analysis, there is an uneven representation of culture and the arts in the city, as people (professionals) with specific forms of institutional power are the central agents of creating a new image for Bandung, inevitably favouring their own groups; as Colomb (2012) explains, the transformation of cultural consumption practices involve "the possession of 'subcultural capital' signalises status in the form of 'hipness'" (Colomb, 2012, p.142). This has triggered a constant renegotiation and exclusion of the boundaries of legitimate culture to include new, previously illegitimate art and cultural forms (like street art and graffiti) (Thornton, 1997).

Our second criterion concerns the discourse of entrepreneurship in the city — discourses as they are powerfully presented in Bandung in both 'soft' and 'hard' branding. The Bandung Creative City Forum itself acts as a soft branding for Bandung as the network focuses on the creative industries. Projects like the Creative Entrepreneur Network and the brand .bdg also reinforce the entrepreneurial discourses in the city. The use of brand, while now a predictable and accepted practice for cities and leisure resorts, nonetheless structures the urban expanse of the city as a single entity often commodified according to external market expectations, or internal economic aspirations. A city all too easily restructures a communication strategy that speaks on behalf of economic actors in a city and not the city's citizenry itself — de facto treating its citizens as customers or even visitors. In terms of 'hard' branding, many projects in the city have supported the entrepreneurial discourses, including Simpul Institute, Bandung Creative Centre, and Kampung Kreatif. These spaces offer benefits for the artist community and people in the creative industries. In 2017, the Bandung Creative Centre was opened by the lead of Ridwan Kamil and the Bandung City Government. The building is located in the central area of the city, and it costs approximately RP 50 billion or 2.5 million pounds. Zukin (1995) argues, in the case of hard branding, that the prioritisation of investment and choice are focused on particular aspects that may deliver the most income using a whole population's taxes. This presents an issue on taxation when the poor pay most and receive least in return. Another hard branding strategy is the Kampung Kreatif or 'creative village' where villages in Bandung are branded under the entrepreneurial discourse. These villages have been turned into commodities aiming at cultural tourists as Peck (2005, p.745) argues that "creatives want edgy cities, edge cities." Thus, when the Creative City approach was adopted, this mentality was automatically applied to the urban development plan. To conclude this section, the two criteria show that Bandung is at risk of facing neoliberalism.

Neoliberalism in Bandung
What happened in Bandung has suggested the neoliberal consequences that have occurred and could be presented in the city later as an effect of the way the city re-represents itself. These include the issues of gentrification, discrimination and hegemony. To begin with, gentrification is a common issue that happens typically along with the process of urban regeneration. It can be broadly defined as a socioeconomic process accompanying any land-use change from low to relatively high functional value (Hudalah et al., 2016). The early literature suggests the replacement of indigenous and working-class people by those of higher socioeconomic status (Glass, 1964). Later on, the concept has developed to include the process of reinvestment of space neglected by the market to generate profit (Clark, 2005), which, then, suggests the physical and symbolic types of gentrification. The Kampung Kreatif project is a clear example for both the physical and symbolic gentrification in Bandung. Villages around the city have been turned into a

place for tourists. This shows that gentrification symbolically limited class-based community in their spaces and under the control of the superior class as this concerned with the capitalist accumulation of wealth manifested in the market or middle-class-driven urban land transformation and its social implications in the form of marginalisation. One of the creative villages, Dago Pojok, has gone through the process by adopting the wall paintings project that has resulted in the attraction of visitors that enjoy the 'painted slum' as a tourist attraction. This increases the gap between the locals, city authorities, and people benefited from the Creative City discourse. Moreover, there are more examples regarding the physical gentrification process in Bandung which suggests the uneven geographical development of the city, for example, areas around the Bandung Creative Centre have been rebuilt for the creative class. This also happens around the streets surrounding universities' campuses in Bandung, for instance, Ganesha, Tamansari and Dipati Ukur. The streets have changed significantly with the emergence of creative-based businesses.

Discrimination emerges in the process of hard branding of the city in Bandung. According to Evans (2001, 2003), hard branding strategy creates cultural icons that are generally acknowledged to attract decision-makers and cultural tourists to cities. On the face of it they appear to be of broad benefit as they offer a more attractive, safer and cleaner city. However, the resources are generally focused, involve particular versions of the city, are targeted at including and making a version of a city for a targeted sector of interested parties, rather than 'the many' (Pratt, 2011). This inevitable 'positions' people outside of the circle and creates a sense of 'otherness.' This process deals with selective storytelling that only a limited number of optimistic voices, images and representations will conflate in urban branding materials. The larger problem emerges when the crisis of cities become a taboo that is avoided mentioning in urban planning (Vanolo, 2015). Despite the initial initiative of solving urban problems, what the Creative City discourse could function as is the masking of the real crisis in the city. In Bandung, the issues of crime and poverty were self-evident, and it was a policy starting

point that the Bandung Creative City Forum saw, and the Creative City discourse was envisaged in a way to address these urban issues; however, when established, the goals of the organisation have shifted, fitting more with economic benefits that the Creative City discourse could offer, the crime rate and poverty have not been explicitly mentioned by the group and city authorities since that stage. With the new branding framework and even more effectively with the hard branding of the Bandung Creative Centre as a centre of attention for the newcomers, the original engaged social vision of the project has been supplanted with a consumption hub.

The problems of gentrification and discrimination create a further problem of hegemony in Bandung. Evans (2003, p.417) argues that cultural flagships have created a form of "Karaoke architecture where it is not important how well you can sing, but that you can do it with verse and gusto." Thus, the 'Karaoke architecture' would be more or less the same in these cities. Eye-catching buildings and the development of around the area, as well as the influx of chain stores, occur in many cities around the world, including Bandung. The example could be seen from Kampung Braga, a village in Bandung where the local government decided to work with private developer and investor to renovate the area to be more attractive for visitors and Bandung's people. The indigenous people of Braga community, however, face the problem from the building of new apartments as these high-rise buildings cover their houses from sunlight and there was no representative from neither the government nor the developer that willing to make a dialogue with the community (Mirza, 2010). These new high-rise buildings have been a phenomenon that happens in many other places where the regeneration takes place, which has led to a homogenous architecture and structural economic adjustment policies. Funding has been diverted into rural development, like in the case of Kampung Braga, and this could be through crafts, heritage or tourism-based projects (Evans and Foord, 2000). In addition, Bandung has been awarded a UNESCO Creative City of Design in 2015. This has also been widely debated by scholars (Pratt, 2011; Rosi, 2014) that the UNESCO Creative Cities Network

membership has the tendency to work jointly with the cities in the network effectively; however, there always the potential for the accolade to be used only as a branding tool to attract investors and tourists. Rosi (2014) argues that the tendency to use the membership as an ideal branding tool has been so far extreme within the network. This could finally lead to the hegemonic branding of cities, presenting themselves as a commodity. This section concludes with the assertion that the re-representing of the city of Bandung is caught in the trap of neoliberalism albeit unintentionally.

(3): Cebu and inter-local policy transfer

Neoliberal localisation (Brenner and Theodore's, 2002) as a framework serves to identify the issue of policy mobility. This is internal to inter-local policy transfer mechanisms in Cebu, which include moments of destruction in terms of the erosion of contextually-sensitive approaches to local policymaking, and the marginalisation of 'home-grown' solutions to localised market failures and governance failures; it involves moments of creation, with the diffusion of generic, prototypical approaches to 'modernising' reform among policymakers in search of quick fixes for local social problems (e.g. welfare-to-work programmes, place-marketing strategies, zero-tolerance crime policies, etc.) — it involves an imposition of decontextualised 'best practice' models upon local policy environments. These moments of destruction and creation could, then, be drawn as criteria to analyse the process of neoliberalisation in Cebu. These moments will be grouped into two main criteria: (i) the discarding of contextual and evidence-based local policymaking and (ii) the emergence of the 'best practice' model (so well publicised by UK public policymakers).

There is a rich literature on 'policy transfer' and the rise of policy mobility. In conventional political-science, the understandings of 'policy transfer' typically hypothesise an "existence of a relatively unstructured policy market within which producer-innovators and consumer-emulators engage in freely-chosen transactions, adopting policy products that maximise reform goals" (Peck and Theodore, 2010, p.169). In terms of border-crossing policies, the orthodox literature is predominantly concerned with ex post facto evaluations of 'successful' transfers, which are typically judged according to "surface similarities in policy designs, scripts, and rationales" (Peck and Theodore, 2010, p.169). Policymakers are maximisers in rational-choice presumptions in this orthodox literature and that there is a tendency for sound policies to drive out bad, in the process of optimising diffusion (ibid).

In contrast to the orthodox literature, the new generation of critical policy studies is more inclined to adopt sociological, anthropological or institutional frames to aid analysis. Peck and Theodore (2010) discuss this in five points. First, "policy formation and transformation are seen as a (socially) constructed processes, as fields of power" (Peck and Theodore, 2010, p.169). Policy transfer here plays a role more than just a process of transmitting best practices, but it is also seen as a field of adaptive connections that is structured by abiding power relations and shifting ideological alignments (ibid). Second, "policy actors are not conceptualised as lone learners, but as embodied members of epistemic, expert, and practice communities" (Peck and Theodore, 2010, p.170). These policymakers are complex actors whose identities linked to organisational and political fields. Third, "mobile policies rarely travel as complete 'packages,' they move in bits and pieces – as selective discourses, inchoate ideas, and synthesised models – and they, therefore 'arrive' not as replicas but as policies already-in-transformation" (ibid). There is a constant process of 'making up' policies in this environment of increased mobility as expertise is insourced from think tanks and consultancies, and so on. Fourth, "the resulting dynamic in the policymaking process is not one of simple emulation and linear replication across policymaking sites, but a more complex process of nonlinear reproduction" (ibid). Policies will, therefore, mutate and change during their journeys. Moreover, fifth, "the spatiality of policymaking is not flattened into some almost-featureless and inert plane or transaction space, marked only with jurisdictional boundaries, across which transfers occur, but in terms of a three-dimensional mosaic of increasingly reflexive forms of governance, shaped by multi-directional forms of cross-scalar and interlocal policy mobility"

(ibid). Hence, policies are not merely transiting, but evolving through mobility, while at the same time (re)making relational connections between policymaking sites. New forms of uneven spatial development and new localisations are continually being produced under such conditions (ibid).

Contrary to the orthodox literature on policy transfer, critical policy studies see policy transfer not as transit and transaction, but mobility and mutation (Peck and Theodore, 2010). Policies are not seen to be packaged for their journeys, they are mobilised and remaking the landscape they travel instead of just travelling across, and they are contributing to the interpenetration of distant policymaking sites. "In this sense, fields of policy mobility are themselves socially and institutionally constructed" (ibid, p.170).

Peck and Theodore's five observation points can help to explain the neoliberal localisation of the Creative City discourse in conjunction with Brenner and Theodore's mechanisms of neoliberal localisation in the last few decades. The formation of the Creative City approach is a socially constructed process and is related to power as policymakers are institutionally interconnected with actors and agencies in organisational and political fields. In addition, even though it seems like the Creative City approach is a policy package, it travels across new urban landscapes subject to process of selectivity. Cities only take what works, or rather, benefits their already formulated interests, or as Peck and Theodore (2010) discuss, is pertinent to the constant process of 'making up' policies, and under such condition that the Creative City discourse has created uneven spatial development.

Relevant to this, scholars (Larner and Laurie, 2010; McCann and Ward, 2010; Peck and Theodore, 2010) have discussed how practical programming knowledge and street-level expertise, like the Creative City approach, have assumed more considerable significance in policymaking processes. First, multilateral agencies, like the World Bank, are paying increased attention to practitioner expertise by enabling new forms of networking among 'middle managers.' Second, there are new arenas for policy exchange, such as international conferences and consultancies. Third, the ideological emphasis on 'what works,' as implied in UK's 'Third Way' discourse and post-financial crisis pragmatism, makes practical experience symbolically privileged than theoretical knowledge. Finally, "a deepening reliance on technocratic forms of policy development and delivery is a widely observed feature of late-neoliberalism" (Peck and Theodore, 2010, p.172). This explains why a practical 'toolkit' like the Creative City has gone viral in the last few decades.

In this part, Cebu will be scrutinised on the issue of policy mobility by considering two main criteria of (i) the discarding of contextual and evidence-based local policymaking, and (ii) the emergence of the 'best practice' model. Starting from the theoretical debate on the Creative City discourse and the issue of policy mobility, arguments from Landry (2000), Florida (2002), and Howkins (2001) will be examined, followed by Cebu's policy transfer process, its urban realities, and the consequences.

Theoretical debate
According to Landry and Bianchini's (1995, p.5) pioneering work on the Creative City, many older theorists, like Patrick Geddes, Lewis Mumford or Jane Jacobs, offered important ideas by emphasising not only how a city might be shaped physically but also what could improve the lived experience for people. Landry and Bianchini (1995) acknowledged the importance of this train of scholarly thought, particularly on urban psychology; however, they emphasise how urban psychology is often used literally by urban planners. By adapting urban design the preconceived psychology of certain segments of the population might appeal to the concept of 'creative milieu' (the conditions of interaction and participation) but demographically separates certain types of citizen. Landry and Bianchini (1995) argue that this social impact tends to depend on the capacity of a policy programme to build partnerships, by bringing institutions like universities together with local firms to devise a broader-based creative environment for the city. Moreover, Landry and Bianchini (1995) add on the importance of 'soft' infrastructures to make people connect and experience a sense of

ownership of the place they live in, but failing to do so creates division, fear and alienation, minimal mobility for 'others,' and a diminishing sense of locality (Landry and Bianchini, 1995, p.7-8). Despite their intention to truly develop more sustainable environments for the people, the Creative City approach has been turned into just one of the 'fast policy' (Peck, 2005).

Florida (2012) argues that to build a genuinely creative milieu or industrious urban community – a 'people climate' is an essential aspect. Florida (2012, p.305) refers to the people climate as a general strategy that aims at attracting people, as well as retaining people, especially, but not limited to, creative people. Like Landry and Bianchini (1995), Florida (2002, 2012) suggests the use of university as a creative hub as he uses his '3 T's' to support that universities are centres for research in technology. They are also magnets for talents, and universities foster an open and tolerant people climate. In this sense, Florida (2012) stresses the importance of people, and he argues that there is no one-size-fits-all model for a successful people climate; however, his creative class thesis still comes with such attempts to harness a form of creativity that comes from buzzing and trendy neighbourhoods, and this kind of place is where it could attract the people climate – "a place where outsiders can quickly become insiders" (Florida, 2002, p.227). Therefore, despite the fact that Florida (2002, 2012) argues that there is no one-size-fits-all model to obtain the people climate, his explanation of a 'suitable' place is kind of suggesting that and in a way encouraging an inter-local policy transfer of the direct replication of the creative city script or as Pratt (2009) terms a 'Xerox' policymaking. In 2017, Florida's new book *The New Urban Crisis* admits the problems that actually happen after almost two decades of the travelling of the creative class and creative city discourses, which are similar to what Landry and Bianchini (1995) predict. These urban crises include winner-take-all urbanism, city of elites, gentrification, inequality in cities, and so on.

Well over a decade ago, Howkins (2001) discussed how creativity needs to be fully recognised as a 'creative capital' as it results from investment and it is a substantial component of human capital and intellectual capital. He argues "Creative capital gains most when it is managed and made purposive. It flourishes best in small, flexible structures, which allow for the prevalence of full-time thinkers, the network office and the just-in-time worker. It needs rights management: to know when ideas can or should be turned into the property; the most cost-effective means of doing so; and the best way to exploit those rights" (Howkins (2001, p.219). This implies that creative capital is a central asset for the creative economy and the creative city needs flexibility and contextual spaces when it is applied or used in an urban reality. Howkins (2001, p.220) emphasises that the raw material of the creative economy is the human talent of having new and original ideas that can be turned into economic capital and products; he adds, "A society that stifles or misuses its creative resources and signs up to the wrong property contract, cannot prosper. However, if we understand and manage this new creative economy, individuals will profit, and society will be rewarded" (Howkins, 2001, p.220). This argument is commensurate with Peck and Theodore's (2010) assertion on policy mobility of how policies, as an exemplar, the Creative City approach could be conceptualised as a policy package or even worse, the 'making up' policy. What is required, however, is place-based policy, where culture is addressed as internal to the specific spectrum of interrelated social and economic conditions in a city, and the use of evidence-based local policymaking should be one of a range of policy approaches used to represent the social and material dimensions of life in the city (the lives of its citizens) and not an internationally emergent 'best practice' model.

Inter-local policy transfer in Cebu
In the Philippines, the development of creativity discourses of all kinds happened intensively at the national level. The Creative Economy concept became the main focus of the Philippine government after the 1997 Asian Financial Crisis. The central government Department of Trade and Industry (DTI) is the agency tasked with developing the Philippines' creative economy, and the increased engagement of international partners like the British Council, consultancies like and the Tom Fleming Creative Consultancy (not

least, John Howkins himself) has played a significant role in the process of policy transfer and policy mobility in the Philippines. An inter-agency consultations programme was led by Tom Fleming Creative Consultancy. This programme involves many government agencies that play important roles in the planning process and development process of the creative industries in the Philippines. These government agencies are, namely, the National Commission for Culture and the Arts (NCCA), the Design Centre of the Philippines (DCP), Intellectual Property Office Philippines (IPOPHIL), Department of Finance (DOF), National Economic and Development Authority (NEDA), National Museum of the Philippines and Komisyon sa Wikang Filipino (KWF), and other government representatives. It can be seen that these agencies are the actors in policymaking. As Peck and Theodore (2010) argue, think tanks and consultancies now are perceived as credible sources as practices and stories from other places are seen as valid sources.

What provoked the Creative City discourse in Cebu was the recognition of Cebu by the British Council as a Creative Capital of the Philippines in 2008, the occasion of which allowed the establishment of the Creative Cebu Council in 2009. The Creative Cebu Council sought to advocate creative entrepreneurship in Cebu and to develop Cebu as a creative entrepreneurship hub in the region. Here, the Creative City approach is perceived as the 'best practice' model, taking for granted the local home-grown solutions to the urban issues in Cebu. The urban reality of Cebu shows that the dominant group of people has the power to select things to apply to the city. Therefore, the Creative City idea does not happen from and within the people. The development of Cebu as a creative city geared towards niche groups such as artists, creative entrepreneurs, and investors, as these were obvious and most strategically effective. This was possibly one of the factors that the Creative Cebu Council did not last but closed in 2016 on account of its lack of effectiveness.

Another organisation that plays a part in the urban scene of Cebu is Create Cebu, interested in urban revitalisation and reclamation through art and collaboration. Its vision is to strengthen the Cebuano creative identity by building a more liveable Cebu where Cebuano history, identity, and culture of creation and open expression thrive and are visibly alive in the city (Create Cebu, 2014). These two different organisations work on the creative city scene in Cebu; however, it is undeniable that the inter-local policy transfer of the Creative City in Cebu is ignoring the evidence-based local policymaking by just jumping into the sugar-coated discourses.

Apart from these local agencies in Cebu, the national agency like the Department of Trade and Industry (DTI) plays a part in the making of the creative city. The DTI Cebu primarily works towards global competitiveness and industry cluster management in the city. It can be seen that international, national and local agencies bombard Cebu with the 'best practice' model of the Creative City and the entrepreneurial discourse, and they have discarded the contextual and evidence-based local policymaking and solutions. Therefore, these urban realities fit the two criteria – 1) the discarding of contextual and evidence-based local policymaking and 2) the emergence of the 'best practice' model – that suggests the neoliberal localisation process at work in Cebu.

The involvement of the British Council has offered creative enterprise training, interagency consultations on the development of the creative industries, a report on creative hubs in the Philippines, and preparation for participation in the ASEAN Creative Cities Forum and Exhibition. With these programmes, plans and strategies, creative and entrepreneurship discourses were injected into Philippine and Cebu. This is visible in the enterprise training where British Council partnered with the UK innovation think tank, NESTA, whose training in Manila and Cebu were 'replicated' in other cities. At the ASEAN Creative Cities Forum and Exhibition itself (as noted, in Manila on April 2017), the British Council played a role with workshops and talks by UK experts. But, as Andy Pratt argues "Who would not want their city to be scientifically ranked as the 'coolest' on earth: the most creative city? It makes the residents feel good, politicians feel even better, and makes outsiders envious: so much so that they might even visit" (Pratt, 2008, p.5).

Neoliberal localisation

The consequences of the Creative City discourse in Cebu can be seen in terms of two critical issues: a zero-sum competition and the diminishing sense of community. In response to the deindustrialisation in cities in the 1980s, Harvey (1989) calls attention to the rise of 'entrepreneurial' urban strategies that have been normalised in the urban development discourse. Confronted by minimal options, cities threw themselves into a series of zero-sum competitions for mobile public and private investments (Peck, 2005). The phenomenon of this inter-urban competition was not only to attract jobs and mobile corporations but also to place cities in the spatial division of consumption (ibid), risking a chance of a zero-sum game in the urban landscape. Instead of the promising usage of art and culture in the truly developed urban economy, creativity strategies do the opposite (Peck, 2005). The strategies commodify the arts and cultural resources as economic assets, enabling the formation of new governance structures and local political channels, and enable the script of urban competition to be performed in eye-catching ways (ibid). Florida (2017), later, recognises the problems' winner-take-all urbanism' and 'city of elites' in his new book as the urban crisis. Peck (2005, p.764) criticises that "Creative-city strategies are predicated on, and designed for, this neoliberalised terrain. Repackaging urban cultural artefacts as competitive assets, they value them (literally) not for their own sake, but in terms of their (supposed) economic utility," and most of the time, this process is led by a circulating class of gentrifiers, "whose lack of commitment to place and whose weak community ties are perversely celebrated."

The arguments above present the urban issues in Cebu more vividly. The 'fast urban policy' (Peck, 2005), directed from the government and influenced by multilateral agencies, like the British Council, makes the city of Cebu faced with an unintentional inter-urban competition, resulting in the wider gap of the rich and the poor, a property-led development dominated by production of high-end residential real estate commodities, the rise of a speculative land market, and a highly regressive spatial allocation in the secondary metropolis of the developing country. For example, in 2011, the newly established Metro Cebu Development Coordinating Board (MCDCB) along with its allied private sector groups launched the ambitious Mega Cebu Project, a 30-year master plan for building a globally-competitive mega-region. Since the 'Ceboom' phenomenon in the 1990s, investment-oriented development has transformed Cebu City's urban space and expanded its development tendrils into surrounding areas. Not only physically, but the coming of these market-driven developments has also changed the political and economic logic of Cebu's urban trajectories (Ortega, 2012) "in the name of pushing Cebu forward in the international map" (Mozo, 2012). These fast-urban policies, including the adopted Creative City approach, reveal the lack of a link between these flagship projects and the people of the Cebu city, leading to the issue of 'social trap,' where a group of people is more interested in their own short-term individual gains and that they could be ignoring the long-term interests of the rest of the people in the city.

Following the problem of social trap from the zero-sum competition, the diminishing sense of community is an upcoming urban issue in Cebu. Harvey (1989, p.9) argues that "Above all, the city has to appear as an innovative, exciting, creative and safe place to live or visit, to play and consume in" as art, culture and creative activities have been increasingly viewed as 'symbols of a dynamic community.' The lure illusion of a dynamic community is what makes creative strategies dangerous as it is portrayed as a shiny picture to cover the negative impacts that could happen, in this case – the diminishing sense of community. Sense of community has long been a concept of central importance in psychological and sociological theories about the impacts of living in an urban society. McMillan and Chavis (1986, p.9) define a sense of community as "a feeling that members have of belonging, a feeling that members matter to one another and to the group, and a shared faith that members' needs will be met through their commitment to being together." Moreover, a sense of community is related to positive social outcomes, such as

increased neighbouring and community participation (Chavis and Wandersman, 1990; Unger and Wandersman, 1982, 1985). In addition, the effects of urbanisation really reflected 'drift' and self-selection of low-status groups into inner-city areas (Gans, 1962, 1967; Hawley, 1972; Kasarda and Janowitz, 1974). This reflects in the case of Cebu when the national government encourages the global competitiveness narratives in the city. Local identities are put aside. The establishment of creative agencies in Cebu, the Creative Cebu Council and the Create Cebu, also only aims at particular groups of people, usually people involved in the creative industries and some niche groups of people in Cebu. Therefore, the sense of community, where people feel belonged and want to participate in making their communities a better place to live in, has weakened.

In conclusion, the Creative City discourse in Cebu led to the process of neoliberal localisation as analysed by the two criteria: 1) the discarding of contextual and evidence-based local policymaking and 2) the emergence of the 'best practice' model. The analysis shows that a zero-sum competition has happened in the city of Cebu regarding the housing market and the usage of space for certain groups of people in the society, especially the creative class, where the goal of being a globally competitive city is presented. This also leads to the diminishing sense of community that happened from the process of urbanisation both in the physical urban form and in social and political logic.

(4): George Town, gentrification and social diversity

The last section in this paper is the case of George Town in Penang, Malaysia. According to Brenner and Theodore's (2002) criteria, the most apparent mechanism in George Town is the transformation of the built environment and urban form (as widely discussed in urban literature on gentrification). This mechanism consists of moments of destruction — the "elimination and/or intensified surveillance of urban public spaces, destruction of traditional working-class neighbourhoods in order to make way for speculative redevelopment, retreat from

community-oriented planning initiatives"; the moments of creation were arguably the "creation of new privatised spaces of elite/corporate consumption, construction of large-scale megaprojects intended to attract corporate investment and reconfigure local land-use patterns, creation of gated communities, urban enclaves, and other 'purified' spaces of social reproduction, 'rolling forward' of the gentrification frontier and the intensification of socio-spatial polarisation, adoption of the principle of 'highest and best use' as the basis for major land-use planning decisions" (Brenner and Theodore, 2002, p.371). These moments can be concluded as a process of gentrification. Ley makes a link between the Creative City discourse and gentrification as he argues "There has been movement from festivals to festival markets, from cultural production to cultural economies, to an intensified economic colonisation of the cultural realm, to the representation of the creative city not as a means of redemption but as a means of economic accumulation" (Ley, 2003, p.2542).

Gentrification as a range of urbanisation processes was firstly defined in the 1960s by sociologist Ruth Glass, explaining London's urban landscape that the working-class quarters had been replaced by the lower- and upper-middle-class (Glass, 1964). Cottages and Victorian houses had been upgraded to fit the needs of the middle classes. Glass (1964, p.xviii) argues that once the process of gentrification started in a district, it spreads rapidly "until all or most of the original working-class occupiers are displaced and the whole social character of the district is changed." Thirty-five years later in London, the 1999 decree for 'Urban Renaissance', released by a special Urban Task Force appointed by the UK Department of the Environment, Transport and the Regions, still echoed what Glass had captured then. In the context of North America and Europe, gentrification can be classified into *three waves of gentrification* (Hackworth, 2000).

The first wave, in the 1950s, was sporadic gentrification; the second wave in the 1970s and 1980s where gentrification became entwined with more extensive processes of urban and economic restructuring and was labelled the 'anchoring phase' of gentrification (Hackworth, 2000); the

third wave emerged in the 1990s and could be seen as the generalisation of gentrification (ibid). Unlike the first and second wave of gentrification, "Third-wave gentrification has evolved into a vehicle for transforming whole areas into new landscape complexes that pioneer a comprehensive class-inflected urban remake. These new landscape complexes now integrate housing with shopping, restaurants, cultural facilities, open space, employment opportunities – whole new complexes of recreation, consumption, production, and pleasure, as well as residence" (Smith, 2002, p.443). The generalisation of gentrification has various dimensions and has evolved into a crucial urban strategy for city governments around the world, mostly under the 'urban regeneration' discourse (Smith, 2002). "Enveloped as regeneration, gentrification is thus recast as a positive and necessary environmental strategy" (Smith, 2002, p.445). The debate for and against gentrification has regularly divided the opinions of policymakers and researchers. Positive and negative impacts of gentrification have been discussed widely by them. The positive impacts include stabilisation of declining areas, increased property values, reduced vacancy rates, increased local fiscal revenues, encouragement and increased viability of further development, reduction of suburban sprawl, increased social mix, decreased crime, and rehabilitation of property both with and without state sponsorship (Atkinson, 2004, p.112). There are also costs of gentrification, including community resentment and conflict, loss and affordable housing, unsustainable speculative property price increases, homelessness, more significant draw on local spending through lobbying by middle-class groups, commercial/ industrial displacement, increased cost and changes to local services, loss of social diversity (from socially disparate to affluent ghettos), increased crime, under-occupancy and population loss to gentrified areas, displacement through rent/ price increases, displacement and housing demand pressures on surrounding poor areas, and secondary psychological costs of displacement (Atkinson, 2004, p.112). In the long run, the negative impacts, however, seem to weigh out the urban benefits. In this section, therefore, the impacts of gentrification in George Town will be discussed in

terms of gentrification as a global urban strategy and consummate expression of neoliberal urbanism.

The criteria of analysis for George Town is again Brenner and Theodore's neoliberal localisation, in relation to the literature on gentrification. The visible route of gentrification is obviously the transformation of the built environment and urban form as it is oriented to a different social class: that is the first criterion. The second criterion involves regeneration projects in the city as, according to Smith (2002), most of the regeneration projects have the concealed processes of gentrification. Projects from Think City, the main actor on adopting the Creative City discourse, as well as federal government, will be cited.

Theoretical discussion
As noted above, Landry's Creative City emphasises the importance of developing a 'creative milieu' as a means of creative urban transformation: "A creative milieu is a place – either a cluster of buildings, a part of a city, a city as a whole or a region – that contains the necessary preconditions in terms of 'hard' and 'soft' infrastructure to generate a flow of ideas and inventions. Such a milieu is a physical setting where a critical mass of entrepreneurs, intellectuals, social activists, artists, administrators, power brokers or students can operate in an open-minded, cosmopolitan context and where face to face interaction creates new ideas, artefacts, products, services and institutions and as a consequence contributes to economic success." Landry's notion of the creative milieu morphs into a gentrification process, considering the sociological character of lifestyle in relation to social class. Café, clubs, bars, co-working space, and so on, attract certain forms of labour, taste, conduct and symbolic value. Despite the an emphasises on the necessity of the 'soft' and 'hard' infrastructure in relation to the qualities of a particular creative milieu, Landry develops no policy model, and cities all too often begin with established urban planning models and attempt to retro-fit the social into the infrastructural —ignoring the socio-psychological complexities of the 'soft' infrastructure hoping that the hard infrastructure would itself be a condition of generating a creative vibe and

attracting creative people. Landry (2008), however, defines soft infrastructure in terms of connections, values, networks, conditions, and attitudes, and these are not conceivably created through the formation or manipulation of hard infrastructure.

For Florida, the myths concerning the redundancy of physical places in an age of mobility and digital communication (Florida, 2005), are proved wrong in relation to contemporary cities like Austin and New York City. Physical place is a condition of clustering, agglomeration, face-to-face interaction, and all the positive benefits of co-location and 'spillovers' and so on. The question is, "Why do creative people cluster in certain places? In a world where people are highly mobile, why do they choose some cities over others and for what reasons?" His popular theory of the '3 T's' of economic growth is his response. To captivate the creative people, the city needs to have all three factors, and Florida (2005, p.37): he defines 'tolerance' as "openness, inclusiveness, and diversity to all ethnicities, races, and walks of life, 'talent' as "those with a bachelor's degree or above," and 'technology' as "a function of both innovation and high technology concentrations in a region." Parallel with Landry's notion of the 'creative milieu', policymakers are provokes into considering the social dimension of urban development.

In his chapter 'managing creativity,' Howkins (2001) discusses ten creative management principles or levers that affect the creative process. These are creative people, the job of thinker, the creative entrepreneur, the post-employment job, the just-in-time person, the temporary company, the network office and the business cluster, teamwork, finance, and deals and hits (Howkins, 2001). Importantly, the importance of the network office is symbolic in our discussion on gentrification: Harlan Cleveland (cited in Howkins, 2001, p.146), American Ambassador to NATO and President of the University of Hawaii, stated that the creative office is built "more around communities of people than communities of place," and people need network spaces for socialising. Thus Howkins (2001, p.148) argues that "Clusters, 'where the mysteries become no mysteries', provide mutual

support psychologically, financially and technically… Any inputs from outside the cluster are quickly disseminated, and internal knowledge and skills do not leak out. Clusters can lead to a high rate of synergy, the positive interchange of complementary resources that creates a result that is more than the sum of its parts." There are, however, different types of creative occupations and works. Howkins (2001) gives examples of writers, artists, and composers that need to work on their own much of the time. Therefore, managing isolation and managing networks are equally important, but in the context of the Creative City discourse, the process of converting these notions into urban policy remains uncertain.

George Town's urban reality
Penang and its capital, George Town, have played a vital role in the Malaysian economy since the 1950s as a 'free port' in Malaysia. After losing its status in 1969, Penang held the first free trade zone (FTZ) in Malaysia, and from the 1970s onwards, there was emerging of the new economic era of manufacturing and industrial sector. From then, Penang has evolved into one of the largest global electronics manufacturing hubs and has been one of the world's most successful stories of rapid industrialisation. From 2002, the Malaysian Government introduces the MM2H (Malaysia My Second Home) programme that allows foreigners that fit the criteria to relocate in Penang for ten years. However, similar to other industrial cities around the world, the manufacturing projects dropped down after its peak in 2008 due to the Major Multinational Corporations in Penang that have not established strong linkages with the domestic economy (Kraras et al., 2010), and like the global trend, these multinational companies then moved to other locations that offer lower costs of manufacturing. The impact that happened to George Town after the period of industrialisation is that there are many run-down buildings.

The nomination of George Town and Malacca as the UNESCO World Heritage Sites in 2008 came at a time when many projects to restore the city as a liveable place were already addressing the material, cultural, economic, and social conditions that attract talent and the required skilled workers. For George Town, it is the city's cultural

diversity that was the critical component to secure the award as it is a multicultural society that has an original urban morphology, such as two-storey shophouse buildings. There are many projects concerning George Town urban development that sprang during that period from different actors. The state and federal government allotted an RM20 million to Khazanah Nasional to do conservation works of the heritage site in Malacca and George Town. 'Think City' was formed by the Khazanah Nasional to implement the George Town Grants Programme that was started in early 2010.

Through the Grants Programmes, Think City granted property owners who wanted to renovate their heritage buildings in the first phase to help to gain trust with various stakeholders. In the second phase, when locals could see the physical transformation in the city, Think City started to fund more community-oriented and intangible heritage initiatives. Also, in their third phase, they focused on shared spaces and projects that would bring people together. Despite the success that Think City claims, a paper on strategies for urban conservation by Malaysian scholars argues that "while there is strong support from the government and public interest groups, there is still no groundswell of support from the public in general to protect George Town's urban heritage" (Lee et al., 2008, p.293). They argue that the indirect conservation by the government works well for the inner city of George Town as the Penang Island local government promoted development at the outskirts of the city centre to create more development in the previously underdeveloped areas (Lee et al., 2008). Fisher (2005) states that the move out of people to a new location can create high vacancy rates in the city centre and this would lead to the decline of the city centre. Lee et al. (2008) argue, however, that this works out perfectly for George Town in terms of buildings conservation. Nevertheless, this paper argues that although old buildings and shophouses are preserved, the cultural dynamics of the inner-city George Town have changed in an uncertain way. Ley's (2003) study argues on the movement of districts from a position of high cultural capital and low economic capital to a position of steadily rising economic capital, which

is similar to the case of rich cultural capital of the inner city George Town, by basing his argument on Bourdieu's theoretical work on the 'field of cultural production'. According to Ley (2003), Bourdieu's (1993) work suggests the problem beyond only the displacement of class: "It problematises the positionality of these cohorts in terms of their possession of different (and in some respects oppositional) forms of capital, despite their common membership in the dominant class" (Ley, 2003, p.2541). In George Town, key actors, gentrifiers and facilitators are gaining more and more capital, while those outside their circle have less. By looking at the first criterion, the transformations of the built environment and urban form, it can be understood that there is a destruction of traditional working-class neighbourhoods in the inner city in order to make way for the higher-cost redevelopment. George Town's vision was an 'external' one, conceived as an external viewpoint, and thus mostly appropriate for visitors.

Tourism development in George Town has been researched widely. The case of the rehabilitation and revitalisation of the Lebuh Acheen-Lebuh Armenian district will be the case in point as the area consists of many historic buildings. According to Kahn (1997, p.103), "It is planned that visitors to this cultural enclave will do more than gaze at buildings. An important feature of the plans is that the area will become a precinct in which tourists will interact more closely with, even directly consume, the objects of their gaze," and that "Tourists will be encouraged to spend their money in proposed handicraft shops, restaurants, and hotels" to make heritage development an integral part of Penang's 'tourism product' (*New Straits Times*, 1993).

The study on the stakeholders' perceptions of George Town as a World Heritage Site shows that the majority of the respondents are aware of George Town's status and think that such status would have a positive impact on local businesses, the conservation and restoration of heritage buildings, and the general well-being of George Town residents; however, many also think that tourism activities could harm George Town's heritage site at the same time (Omar et al., 2013). Moreover, the study suggests that there is no

planning collaboration between the stakeholders and policymakers. Using the second criterion, the regeneration project in the Lebuh Acheen-Lebuh Armanian district suggests the process of gentrification has emerged as a 'sugar-coated' regeneration.

Consequences
What happened in George Town has resulted in neoliberal consequences – social reproduction and disintegrating developments. The sociologist Christopher Doob (2015) explains that social reproduction refers to "the emphasis on the structures and activities that transmit social inequality from one generation to the next." The upper class has many advantages and will continue to receive them after the process of social reproduction – in this case, through the process of gentrification. Pierre Bourdieu (2018) famously indicates the four types of capital that form social reproduction: financial, cultural, human, and social capital. These are all interconnected to create a cycle of social inequality that will be passed on across generations (ibid). Bourdieu (2018, p. 257) further argued that "The specific role of the sociology of education is assumed once it has established itself as the science of the relations between cultural reproduction and social reproduction. This occurs when it endeavours to determine the contribution made by the educational system to the reproduction of the structure of power relationships and symbolic relationships between classes, by contributing to the reproduction of the structure of the distribution of cultural capital among these classes." Smith's study (2002) suggests that the process of gentrification has been generalised as an urban strategy of capital production, and the social reproduction of cities delivers certain kinds of capital to certain constituencies. Urban regeneration's common social causes, Smith (2002) argues, often only succeeds in bringing back certain classes or groups of people. Social and economic restructuring is, at the same time, the restructuring of spatial scale, "insofar as the fixation of scales crystallises the contours of social power – who is empowered and who contained, who wins and who loses – into remade physical landscape" (Brenner, 1998; Smith and Dennis, 1987; Swyngedouw, 1996, 1997, cited in Smith, 2002, p.435).

In George Town's case, the urban regeneration of the inner-city area demands an attentiveness to social reproduction. Many residents move to the city periphery and newly developed areas, retaining their old homes in the inner city as temporary 'rentals' or holidays homes. The inner-city area has been socially hollowed out, often by residents themselves, and where the cultural determinants of the place are defined by visitors. Thus, the cultural fabric of the area dissipates. Kahn (1997) argues that both governmental and non-governmental groups have played a part in influencing George Town's urban evolution: apart from the George Town Grants Programmes from Think City, George Town Festival by the collaboration of the state government, Penang Global Tourism, and George Town World Heritage Incorporated are also significant to the cultural fabric of George Town's inner city. The inner city, which was the area of the indigenous working-class Penangites, has been reproduced to share, mostly, the arts and culture of the middle and upper-class visitors and peripheral residents. This is, therefore, how the social reproduction in George Town emerged through urban regeneration, gentrification, stimulated in part at least by the Creative City.

The second consequence is the disintegrating developments of the city that ultimately leads to the loss of social diversity and a capitalist trap. In George Town, the nomination of the UNESCO World Heritage Site status provoked many development schemes in the city. To gain and maintain the status, the state and federal governments have engaged in development according to the UNESCO three Outstanding Universal Values – (i) "an outstanding example of a type of building, architectural or technological ensemble or landscape" which illustrates a significant stage in human history, (ii) the "exceptional testimony to a cultural tradition or to a civilisation which is living," and (iii) the site exhibits "an important interchange of human values over a span of time" (Think City, 2013). For the George Town built environment, to be sustainably conserved and maintained, the economically viability of the scheme is internally related to building occupancy and financial

returns. The increasing complexity and expense of professional heritage architectural conservation also faces the challenge in representing the complexity of the country's multicultural social balance: it has been argued that indigenous Malaysian culture is over-represented in the approach to building design and articulation (Kahn, 1997). This entails the question of social diversity, diversity of class and race.

In addition, the disintegrating developments also lure the Penangites to fall into the trap of capitalism when tourism and visitors define the strategic economic priorities of the city. In the case of George Town, the whole inner-city planning is defined as a tourist destination (Kahn, 1997). The George Town Action Plan 2013 began with the waterfront area, Chew Jetty, with a rationale of 'returning the waterfront to the people'; however, the social dimension of the design (in terms of creative milieu, or lack of) belied the fact that the constituency of the capital generated was, in fact, visitors. The jetty is largely articulated by shops. The cultural dynamics have shifted to a job-oriented service-based industry of earn-and-spend. To conclude, the Creative City discourse in Penang and other projects did not have a determining impact but combined with existing priorities and strategic planning. Rather, it supplied a motive for co-opting development 'techniques' that visually have a cultural dimension, but whose rationale and outcomes and service-based economic capital. The city facilitates a form of social reproduction that at once disintegrates (in Bourdieu's terms) cultural and human development and increases financial and social capital.

Conclusion

In this article, four cases along with four major issues pertaining to the cultural politics of creative cities in Southeast Asia have been discussed – these were, participation in Chiang Mai, representation in Bandung, inter-local policy transfer in Cebu, and social diversity in George Town. Our discussions were framed by brief reference to the Creative City discourse (Landry, Florida, and Howkins) so as to indicate how a lack of theorisation of the policy process has allowed the Creative City discourse to be used in other

non-cultural frameworks of urban planning, economy and enterprise management. Indeed, the open-ended character of Creative City ideas allow it to be appropriated by planning rationales quite hostile to the cultural priorities of the Creative City discourse thinkers themselves. It is the contention of this article that Creative City discourse is playing a role in facilitating neoliberalism in these cities. This role is not decisive nor determinative, but suggests that how the Creative City has been defined allows it a compliance with neoliberal logics of change, development, capital and social reproduction. This suggests that the Creative City, given its now-global influence, requires a theoretical re-invention, inserting the original social, public and cultural priorities, and devising policy models by which implementation can take place without the compromises to neoliberalism witnessed in our four case studies.

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Trust and Cultural Governance

Ian King and Annick Schramme

Article Information

Abstract

What is the role of governance in the cultural sector? Is governance simply a tool for measurement or can it prove to be a mechanism for support and dialogue? Evidence gathered from our empirical global study of 2017, indicates that most cultural governance approaches remain relatively crude and general and are only partially adapted to the local situation. We elaborate this claim through a careful and systematic examination of a theoretical diagram (Figure 1), which summarises the evolution of cultural governance through evidence collected from nine different geographical locations (across five continents). How governance can develop (we suggest, away from control and towards one of support and dialogue) depends upon a number of factors. These factors include attributes of confidence, cooperation, appreciating a variety of tangible and intangible features, and most importantly, institutional trust. Institutional trust should be understood as being different to the more widely discussed notion of interpersonal trust and furthermore, our understandings are further complicated by the broader cultural and political context of a country. With this article we want to claim that institutional trust is an important factor (or even condition) in the development of an effective cultural governance process.

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& Global Development

Introduction

In October 2018, Foreign Affairs and Vice-President Federica Mogherini confirmed that the European Union (EU) is now a 'cultural superpower'. This assertion was not surprising considering the wealth and richness that resides within this sector across the whole of Europe, yet a closer examination of the situation reveals that many EU member states are looking to cut budgets for arts and culture. What makes this situation difficult for politicians is that simply making cuts (at least, arbitrarily) could also be a 'vote-loser' if not managed in a sensitive manner. The politicians are often aware that they need to balance on the one hand, the knowledge that continuing to fund the arts and culture at current levels is not realistic in the medium to long-term, whilst on the other hand, many European states, are now demanding that arts and cultural organisations with public financial support, need to become more financially resilient and look for philanthropic support, sponsorship and/or other resources. Additionally, in recognition of their activities, they expect that there should be no compromise with regards to their artistic integrity, mission and values. This is a difficult balance for the arts and cultural sectors between business resilience and artistic excellence.

In order to introduce the central argument of this paper, let us first provide the context for the discussion for readers perhaps unaware of the background. The first question many countries or regions ask today (we will use 'locations' as an abbreviation in this paper) and their governments (and this can be at multiple levels across these locations, that is, local, regional and national): are the arts and culture sectors demonstrably valuable to a community or are they simply a wasteful drain on public resources? The evidence suggests that the arts and culture for Europe and more widely across the globe are generally positive for societies (see Peacock and Rizzo, 1994; McCarthy, Ondaatje, Zakaras and Brooks, 2004; Crossick and Kaszynska, 2016). As an example of the numerous quotations of economic statistics, revenues of €535.9billion (a figure from 2015) were generated from the creative and cultural industries (CCIs) contributing 4.2% of Europe's Gross domestic product (GDP). A figure

like this, places the sector as the region's third-largest employer (after the construction and food and beverage industries). And likewise, this rosy picture is not limited to Europe, for in the US, Australia, Canada, Japan (to name a few) arts and cultural economic activities are often reported to account for similar summary percentages of their respective nation's GDP. Its size, its facility to support young people, and women (often over 50% of a working population) makes the arts and cultural sector politically attractive but also a very sensitive arena. Therefore, not getting a convincing balance for this sector may have severe implications for future development, current attractiveness and future valuation of arts and culture, and its ramifications in terms of political economy can spread well beyond this sector both in that location and beyond.

We do need to recognise, obviously, that some areas of these industrial sectors are commercially viable (for example, commercial art, books, design, some heritage locations, and so on), however, indisputably, there is another dimension, one that is less profitable and more closely allied to heritage or education, (or simply, the protectors of history). Consequently, often in order to protect the range and depth of the arts and culture in any given location, decisions need to be made regarding whether (or not) to offer support, and if so, how? This leads us to the opening question, if different locations decide, or need to decide, whether or not they want to fund certain aspects of the arts and culture – how can they justify this allocation of monies in the face of the usual political routines of prioritisation and justification of expenditure? This inevitably leads to current political and economic dynamics, where providers (grant givers from mostly public-sector governments of different levels and different types of trusts and charities etc.) require the arts and cultural sector both in Europe to provide full accountability and transparency (basic principles of governance) so as to assume a professionally defensible position within the political economy.

In this paper, we want to examine how, and with what mechanisms and circumstances, needs to be developed in order to provide a viable means of response to these challenges. That is, an efficient and effective means to support both providers

(see above) and receivers (normally arts and cultural organisations and these can be both large and small) and seemingly to make an accountable and transparent means of control for the best use of public funds. The process most often employed to fulfil this complex task is what we refer to as 'cultural governance'.

Yet, despite this propensity the application of governance principles at present remains relatively crude and inadequate for the complex needs of this sector. In this paper, we will suggest that through extensive empirical evidence it is possible to support the development of a process that leads to a more effective tool. This is not something that can be immediately implemented, but rather something that demands time and experience to appreciate the 'local' issues that this entails (which we will identify below). It is important to appreciate that the development of an effective cultural governance process within any given location is unlikely to conform to a standard template. The individual circumstances of the location, including its political climate, together with the stage of its appreciation of arts and culture, is critical.

Nevertheless, we will argue in this paper, that there is a common pattern of development for the arts and cultural sectors with regards cultural governance. We summarise this in Figure 1. and will discuss the different stages in the pages below. Our examination in the following pages suggests that we are, globally, currently in an important phase in the appreciation and support of arts and culture. Of course, not all places around the world are at the same stage of appreciation. Some places see arts and culture as being critical to the guise and identity of a community, perhaps as a country as a whole, whereas others are still trying to determine what exactly is arts and culture to them! This difference in appreciation, together with an increasing move towards greater control and measurement of resources (in a climate where resources are becoming increasingly scarce), leads us to the current situation where governance in the arts and cultural sector is developing, not all at the same speed, nor always in the same direction. Our examination in this paper attempts to chart the critical issues facing the development of

governance in the cultural sector, and we will assert that while there are differences there are also common features that make for a pattern of development. This pattern of development, we suggest, can be presented in two halves. The first half reflects an evolutionary development with a prescriptive application of the principles of governance (including clarity regarding the roles and responsibilities of stakeholders; appropriate check and balances; and perhaps most importantly, transparency and accountability).

We observe that most locations still reside in this first half (identifiable in the Figure), yet there is also evidence to suggest that not all locations are content to remain in this first half. We therefore evolved further to positions (in the second half) that we define (in the Figure) as *devolutionary*. The distinct difference between the two halves is the change of emphasis – from an emphasis on control and measurement, towards one of 'trust and support'. We suggest that for the arts and cultural sector (and this may be true for other sectors as well — but we will not make this claim here) that if we are looking to develop a healthier ecosystem through governance and trust, then the current disproportionate focus towards measurement has in many locations to be replaced by a more balanced support mechanism and therefore move towards a context in the spirit of the words spoken by EU Foreign Affairs and Vice-President Federica Mogherini: " to be … financially resilient and additionally, in recognition of their activities; "equally, not compromising with regards their artistic integrity, mission and values".

What we also need to stress at this point is that such a move forward is not appropriate for all locations. Some locations face other factors (political, social, and environmental) that preclude this type of development as being the only way forward. Therefore, we need to emphasise that our examination below will only be relevant for some locations at a certain point in their development.

2: What is cultural Governance?
We should also at this early stage rehearse for those readers unaware of the context of cultural governance its origins. Therefore, what is cultural

governance? The term cultural governance unsurprisingly emerges from the corporate sector, where it has been in common usage for several decades (see Lubatkin, Lane, Collin, and Philippe, 2005). Etymologically the term can be traced back to the Latin (*gubernare*) and Greek (*kybernein*) words for 'govern' which means steering in the navigational sense (see also Stokke 1997: 28). Thomas Schmidt (2011) makes the claim that it is important to appreciate the sectoral features of governance, and he is clear that each sector demands its own understandings and this is certainly true for arts and culture.

Accordingly, Moon argues that cultural governance can be defined as: '(…) government's direct or indirect involvement in the promotion and administration of programs of cultural organizations (including museums) existing in specific geographic boundaries with unique financial and administrative arrangements' (Moon 2002). Moon's definition seems to emphasise administrative control – seemingly following in the spirit of the corporate definition. However, the question emerges, is this approach in the best interests of both providers and receivers? 'Providers' as a grouping depicts grant-givers (and perhaps in some circumstances, see Brazil, where financial grants are less evident and instead they introduce tax incentives), whilst 'receivers' are the applicants, normally cultural institutions/ organisations rather than individuals (artists) who argue that they represent a particular organisation from the arts and cultural sector who wishes to apply for support – whether this is public monies or other type of third-sector income.

To support our argument, we draw upon an international empirical study (that the authors conducted in 2017). Carried-out across nine different international countries (Ethiopia, Taiwan, India, Hong Kong, Australia, South Africa, Brazil, Serbia and USA), and spanning five continents, we used the five cultural governance principles developed by Schrauwen & Schramme (2012) as the base for our examination. These are: a clear division of roles and responsibilities; check and balances; transparency and accountability; the composition of the board and the relation with the stakeholders, as a framework to test in how far the different locations were familiar with them

and in how far they applied these principles in their context. The opening argument of our empirical study from 2017 was that a 'one-size fits all template' for all locations was likely to be inappropriate and generally our study confirmed this hypothesis. The result was nine individual collections of data written by our local collaborators that we included in our book (published by Palgrave-Macmillan) entitled: *Cultural Governance in a Global Context: An International Perspective on Arts Organizations* (ISBN: 978-3-319-98859-7).

We will not here rehearse all of the results and findings from each location. What we will do is summarise the overall results and discuss our subsequent reflections as a contribution to debates on democracy and development in the cultural arena.

3: Findings from the 2017 study and implications for the future

In the final chapter of the above book, we suggested that depending where arts/cultural organizations are in their own life cycle, and correspondingly where the location was in its stage of development as a public-sector provider, there would be a correlation between these two features with regards to the understanding (and application) of cultural governance. We place this correlative understanding within two predominant features that depicts the two main halves of Figure 1 (below) – the evolutionary and the devolutionary.

The evolutionary part of the model reflects the earliest stages of appreciating arts and culture in a location. Here we offer four stages of evolution: the reader should see Figure 1 not as an accurate prescription, but rather as a generic, representation of evolution and thereafter devolution. That is, different locations will develop at their own individual pace rather than via a particular prescriptive path.

In the study, we noted that at the first point of evolution were the beginnings of the recognition of the potential of arts and culture and cultural policy. It should be noted in these early stages of evolution that in some locations, the term *culture* is not employed or used as a descriptor of activities, rather other alternative labels are used

Key:

Informal
Formal (borrowed)
Local practice
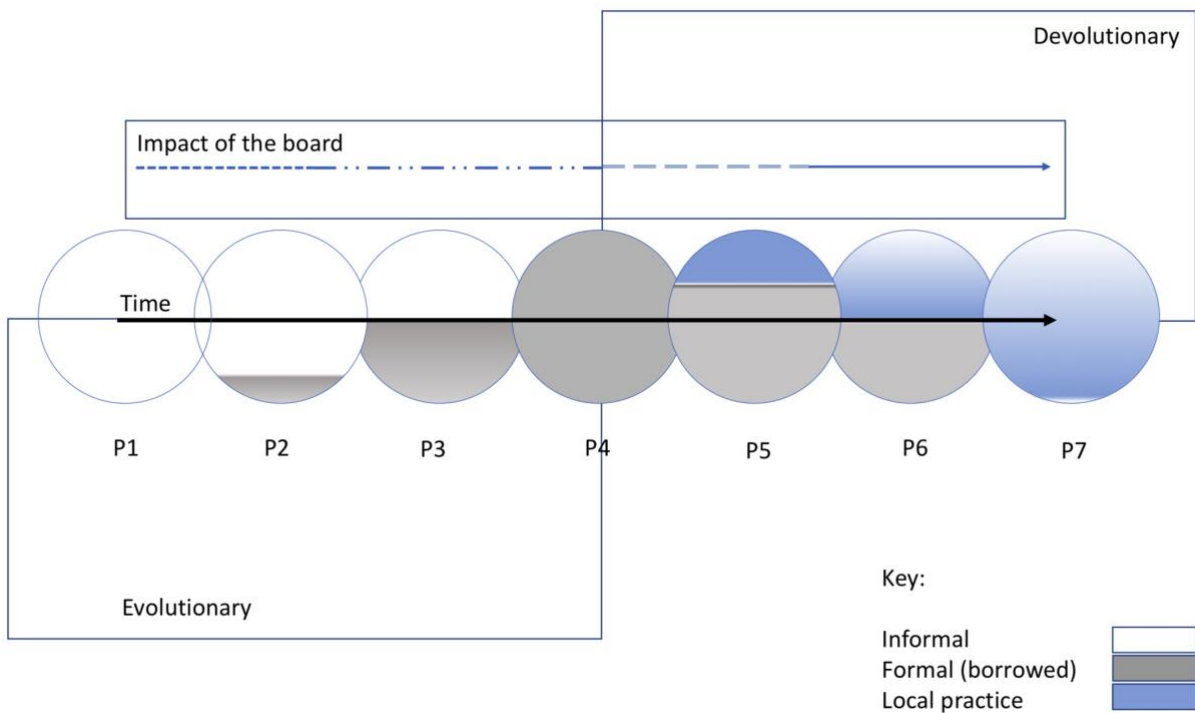
– for example in Ethiopia, the term they employed most commonly was 'heritage'. Thus, arts and culture were seen as aspects within the wider notion of heritage and at this early point of evolution understandings of the potential/value of arts and culture was still emerging.

This is depicted in P1 (place 1) and P2 (place 2): here we can note that locations were at varying degrees starting to appreciate their local traditions, their identity and what made them who they are. People often talk about the dangers of westernized television etc., but what we also noted in the early stages that it was often through the influence of other parts of the world (via television, tourism etc.) that often make local audiences look again at themselves and their own origins, identity etc. Following these early stages of reflexive awareness, we see a gradual movement from P1 to P2. A process of realisation for the different stakeholders to look at descriptors and values made them develop terms/needs such as 'preserve', 'protect' and 'support' their own *identity*, their *artistic traditions*, and other arts, and cultural features, which all over time led to the establishment of national museums and other important

institutions. Thus, we see evidence of the early stages of valuing arts and culture starting in these stages. However, what we also noted at these early stages was that locations often did not simply rely on their own 'trial and error' in terms of evolution, but would often turn to other models from other locations — and the evidence of which reveals a form of acculturation.

'Acculturation' is when a location attempts to borrow examples of good practice from other more experienced locations (see for example: Sam et al, 2008). They recognize some aspects of their respective histories/interests that were similar and accordingly used this as their basic rationale for the implementation for guidance to their local arts and cultural organizations.

Accordingly, they turned to other more experienced locations for a system that they could 'borrow' and 'implement', sometimes the Arts Council from the United Kingdom and sometimes UNESCO. In the case of the UK, this may have reflected that many of the locations were former colonies or provinces in the past of the United Kingdom so other locations may look to other influences.

In Figure 1, then, as a consequence of this evolution of acculturation, and leading to implementing of certain rules and procedures, we can see the balance of practical change – from predominantly informal (P1 and P2) towards one where there is a growing (P3) and at P4 an established influence of the formal. In effect, what we are witnessing in these stages of evolution is the borrower looking for a 'fast-track' process, with a proven track record of successful performance – thus, a proven tool seemingly able to reduce the risk of poor implementation and/or waste of resources (including time, money, and so on) for this evolving location. We should note that as the formal becomes more and more dominant in the later stages of the evolutionary aspects of the model (P3-P4) then it becomes increasingly evident that the provider wants to use cultural governance as a tool and to be an explicit form of measurement. A focus that might be critiqued as a attention to be more on the tool of scrutiny rather than on the subject (the arts and cultural sector) itself. Thus, producing what might be labelled a form of 'means-ends inversion'. That is, the process of control becomes more important than the subject examined. If this occurs then this can lead to a very dissatisfied collection of receivers — often artistic-led complaints, where they believe that their needs/understandings are not appreciated by the cultural governance process and should this become widespread then discontent emerges and can become dysfunctional (see Buduru and Pal, 2010).

We can see in Figure 1, in particular the element labelled P4, how the move towards the formal implies an explicit need for accountability/ transparency in order to comply with the requirements for continued funding. For some observers P4 might be seen as the optimum stage for cultural governance, but however, we suggest that it is not the solution here for the majority of arts/cultural locations (However, this can differ subject to the political context – see Brazil for example). However, for many artists and creatives they need a context that appreciates who they are and what they can fulfil as part of a particular arts/cultural organization. What we witnessed in multiple locations both from this group and the management teams that work with

them, is that the 'borrowed process' did often work but only to a limited degree, and what often emerged from local concerns were questions of appropriateness and relevance for them? P4 seemed to suffer from two main considerations. Firstly, as mentioned, some of the local needs were overlooked. That is, some institutions felt that some of their own individual activities were not fully appreciated. That is, the process/tool was not sufficiently sophisticated enough – often not able to grasp the full range of features that characterized the process and outputs of a specific arts/cultural organization (see Paasi, 2002 for a discussion of the problems of local versus global).

This leads us to the second consideration, and this reveals a propensity to measure the tangible elements often at the expense of the intangible being overlooked (and we will discuss this claim more fully in the next section). There might be a number of reasons for this imbalance – including the origins of governance lay in another sector and location and therefore intangibles were less important or simply different? Therefore, it was these types of signals of discontent that led us towards appreciating the need for a second half to Figure 1 – the *devolutionary*.

The devolutionary represents a context where the location has reached a level of maturity and confidence that the providers are able to re-examine their own policy and practice in supporting arts and culture. We should also recognise that this recognition is not simply the provider acting alone, but rather actively is a collaboration and dialogue with receivers. What we mean by this, is that in the previous evolutionary phase this was much more of a hierarchical relationship, where the power resided clearly with the provider. Now we suggest, in terms of collaboration, it is closer to a professional 'equal' collaboration, i.e. one that draws on the expertise and experience of both parties and their respective views of their roles and activities. Of course, and this is important to stress, not all receiving sectors will be at the same level of maturity (or possess the political climate) in these locations. Therefore, we observe that the providers do need to possess a level of maturity and flexibility in order to accommodate individual organizations and different sectors developing at

varying speeds and therefore being at different places in their development life cycle. Thus, it is important to stress that the devolutionary phase recognises that support for the arts and cultural sector needs to privilege the interpretation of local need. Therefore, understanding local need demonstrates a degree of confidence that seemingly is no longer following the route of other locations but now taking control of their own need (Paasi, 2002).

4: Tangibles and intangibles for cultural governance

As was mentioned briefly in the above section, the limitations of a 'borrowed' process, is that it will likely have been developed in another location and perhaps even for a different sector. Ideally a borrowed process needs to be sufficiently flexible and penetrative to accommodate the different and variety of features that may emerge across these locations and sectors. Failure to appreciate this range of features may be detrimental to the effectiveness/relevance of cultural governance and therefore lead to questions regarding its value.

This is especially important for appreciating the character and contribution of the intangibles of cultural organisations. For our purposes, we argue that it is important to appreciate that intangibles can complement tangibles and likewise there can also be other intangibles that are independent of tangibles.

Briefly, what we mean by this is that a tangible asset is a specific physical feature/object/outcome produced within the arts and cultural sector (and we might include here such items as physical spaces of museums, theatres, galleries, etc. and furthermore we would likely include here aspects of their operation and capital costs with regards to replacement in certain circumstances). Therefore, these features are characterised by physical characteristics. Normally these features are easily identified and appreciated by cultural governance processes and therefore measurable. Thus, complying with the normal features of any governance process, regardless of sector.

However, there are also intangibles that exist in the arts and culture sector that may be unique to them, and therefore because it is a borrowed

process, then these features may not always be appreciated. Succinctly, intangibles do not possess the same physical characteristics as tangibles but may (or may not) be associated with them. Therefore, an example of an intangible associated with a tangible might be a theatre performance. Here the tangible elements of the performance include, number of performances, its length, cast, costs, and so on, together with numbers of people in the audience, etc. Thus, we can appreciate that these aspects of the performance are physical and therefore immediately measureable – yet concurrently, there are other features of this performance that generates non-physical, intangible features, for example as in responses to questions as to 'why this performance'? Or, what are its artistic contributions to the profession, or artistic field? What other forms of value do these performances offer to the audience, and also to the field etc.? These latter features are likely not to be measurable in the same way as the tangible, and yet at the same time, they can become essential for evaluation, so as to appreciate the full contribution of the performance and its place in the overall programme of outputs from this arts organisation.

An alternative way of understanding this relationship is to appreciate that the relationship between the tangible and the intangible in the arts and cultural sector (and we are not claiming this represents all sectors) is not one of opposites or opposing elements – that is, some of the features are visible whilst others are invisible – but rather that their relationship is often complementary. Closer to what French philosopher Maurice Merleau-Ponty eloquently described as where the intangible (or as he labels it 'invisible': *l'invisible*) is more accurately a relationship where one resides 'in-the-visible' of the visible (Merleau-Ponty, 1968). That is, the invisible enables the visible… or to put it in our terms, the intangibles endows the tangible. Not appreciating this relationship is tantamount to only partially appreciating its contribution and therefore the difference between a strong, as distinct from a weak evaluation. Therefore, returning to evaluating the performance above, appreciating only the tangible provides only a partial understanding, it is only when the

intangible features are appreciated as to 'why' and 'understanding its value' etc. that a fuller understanding emerges.

Furthermore, there might be other intangibles that are not specifically associated with tangibles that are also very important to the arts and cultural sector. For example, artistic freedom, artistic judgement, creative reputation, and so on. Each of these (and others) are important to appreciate because they demonstrate to external perceptions the nature of the contribution from the arts/cultural organisation – and although not possessing any physical attribute or really being directly associated with a tangible, they still represent critical features that go to the very core of the rationale for the being of the specific arts/cultural organisation. UNESCO offers additional understandings of intangibles related to heritage: 'The importance of intangible cultural heritage is not the cultural manifestation itself but rather the wealth of knowledge and skills that is transmitted through it from one generation to the next. The social and economic value of this transmission of knowledge is relevant for minority groups and for mainstream social groups within a State, and is as important for developing States as for developed ones'.

Achieving optimal levels of artistic and creative outcomes lies at the core of providing support for the arts and cultural sectors and what we hope we have suggested in this section, is that for the arts and cultural sectors, in order to appreciate the 'qualities and value of their outputs this requires appreciating the intangible as much as the tangible and in order to fulfil the requirements set-out by EU stated at the beginning of this paper. Failure to do this denigrates the cultural governance process and this is especially important for the devolutionary stages of the Figure 1. However, the question that arises in the context of these aspirations, is how to facilitate in ways which meets the needs of the providers (in terms of accountability and transparency) and likewise in terms of the receivers so that they can demonstrate their 'excellence' and how they contribute to artistic/creation? In the next section, we turn our attention towards 'trust' – both as a further illustration of the intangible but

also reflecting its role in the process of developing an effective cultural governance.

5: What is trust and how (and why) is it important for cultural governance?

Organizations can "succeed or fail on the notion of trust." (Sheppey and McGill 2007, 245).

Our point here is that if an organisation proceeds towards the devolutionary phase of Figure 1, this then is likely to require a different form of relationship between the provider and receiver to the one found in the evolutionary stage: that is, is a move from a relationship built upon hierarchy and control towards one that is collaborative, built around the notions of trust and responsibility.

We observe that at the evolutionary phase of Figure 1, the process increasingly evolves to one that is relatively rigid and prescriptive yet, also observed, once the location becomes more confident and more aware of their own attributes these more mature receivers will want to have a much greater say in their own development. This entails increasing sense of interests in the character of their own governance, and therefore their needs moves to a devolutionary guise. We suggest that this reflects a type of maturity and is almost inevitable in certain contexts. The role and appreciation of this need is critical and this is where the provider's maturity and confidence in the process is essential.

Here, together with the provider, the receiver now reaching the devolutionary phase is no longer part of a process that is one analogous to an 'outside-looking-in' process (imposing a rigid means of scrutiny), but rather it is one now that it is an 'inside-looking-out' frame. A frame that still performs the main principles of accountability and transparency, it is now the case, that because of the maturity of the context, the providers and receivers are able to grasp their full character – which includes both tangible and the intangible – and able to be presented in such a way (a flexible frame) that allows the receiver to maximise their contributions to external audiences. In some ways, this description builds upon ideas/practice found in the Netherlands and Flanders and their policy of 'apply and explain'. That is, they allow the arts and cultural organisation (as a result of their experience from the evolutionary phase and

in consultation/collaboration with the providers) to develop and construct a frame of evaluation that meets and responds to all stakeholder needs. In this way, the providers acknowledge that the receivers will likely produce individual governance frames that characterise the specific guise, both: past, present and future oriented.

However, to achieve such a 'healthy' balance a critical feature required for all involved stakeholders is the notion of 'trust' and this is not something that can be immediately assumed, rather that our understanding of trust reveals multiple issues – from understanding its guise, its implementation and thereafter its role in evaluation.

Discussions of trust in academic literature has been broad and often contradictory (Bachmann, 2011; McKnight and Chervany, 2001, Shockley, Neal, PytlikZillig and Bornstein, 2016) leading some to suggest that there is no agreed definition to date (see Rousseau, Sitkin, Burt, and Camerer, 1998, p. 394). A quick examination through Google Scholar reveals claims of over 100 different definitions of 'trust'. Any suggestion that we might quickly or simply identify and provide a template to implement a trustful relationship is not an easy task. However, we can determine a route that moves our investigation forward.

Firstly, our requirement for trust is that it must be *relational*. The literature suggests that this normally is between trustee and either another person or an object (an object to perform) – but the literature is keen to point out that we cannot assume this is reciprocal (Rousseau et.al 1998). This then leads to questions regarding strategies to reduce the risk involved (Luhmann, 1979) and the impact on the trustee (and perhaps for the trustor) in terms of their voluntary state of vulnerability (see Hoffman, 2002; Luhmann, 1979). Cole and Cohn (2016, 161) summarise these positions in their statement: 'when one individual trusts another individual, he/she makes him/herself vulnerable and expects that the other individual will not take advantage of that state of vulnerability'.

There might be several strategies to reduce risk/vulnerability but ultimately trust is about having confidence in the other and this leads us to

our second observation. That is, trust is a process and the experience from the evolutionary parts of Figure 1 can provide greater (or lesser) confidence with regards that the other party to the relationship will act consistently and in a style that fulfils the needs of the provider/receiver. It is important to stress that because of the alliance in values and the desire for an effective outcome that the potential divergence of value/interest can be expressed in some industries is seen less likely to occur in the arts/cultural sector (see Parkhe, 1998).

Finally, it is important to appreciate that our examination of trust is not in accordance with general examinations of trust in a casual or informal relationship but rather reflects what Lynne Zucker back in 1986 characterised as 'institutional trust'. Zucker (1986) argues that institutional trust 'generalizes beyond a given transaction and beyond specific sets of exchange partners'. Actors base their expectations regarding the behaviour of others whom they do not know (on a personal basis) on the quality of the institutional system (Rothstein and Stolle, 2001). More specifically, in terms of our discussion: '*the different actors are formally representing different organizations and all stakeholders should base their confidence on their professionalism to act fairly and consistently in fulfilling the tasks that they agreed*'.

Therefore, our assessment for 'trust' is one of institution/organisation regarding a form of cooperation with the quality/outcome of another (in our discussion here between providers and receivers) in contrast to an interpersonal assessment of individuals.

An important ingredient here in appreciating institutional trust is the role of responsibility. With institutional trust, the role of the individual is still pivotal. However, after carefully examining the arguments regarding trust, we suggest that within organizational settings that there is a different mind-set to the level of responsibility perceived by the actor in comparison to an individual acting alone. An individual acting alone has no formal allegiance beyond himself or herself (self-interest) and therefore can be discretionary with regards to their attitude regarding

responsibility. Our argument is that with people in occupying roles fulfilling institutional trust this explicitly relies on 'earnt recognition' from previous dealings at the evolutionary levels and the parties involved believe that the other will act consistently and with responsibility and in some sectors, this can be especially powerful because the individual is not just an employee but someone who is committed to up-keeping the values that their organization possesses (for example in the arts and culture – but also health, schools etc.).

The purpose of cultural governance is to look to reduce the risk associated with the financial support/cooperation from the provider that they trust that the receiver will fulfil the activities that they promised to carry out. This means, towards a form of reciprocal trust between parties. We suggest that through an appropriate frame of support at the devolutionary level that this amounts to a reduction in risk for the arts and cultural sector. We suggest that once the actors reach a certain level of maturity – one that is not governed by close control, but one rather reducing risk through mutual levels of trust and appreciating responsibility then this level of activity can take place.

Thus, returning to Figure 1, we suggest that by reaching P7 we hope to see a fully transparent, open, accessible process led by 'trust' and a corresponding understanding and appreciating of 'responsibility' between provider and receiver. We must also stress that this relationship should not favour large institutions (capable of maintaining experts to facilitate this relationship), but also be sufficiently flexible to support (and encourage) smaller institutions that are able to 'earn' this trust (and this may require a different frame of expectation to large institutions). Likewise, it must be understood that this frame might also need to differ across sectors (within arts and culture) – because the sectors are each progressing at different speeds.

We do envisage that developing along the devolutionary route requires a different balance that provided in the evolutionary stages and essential to this development are the respective boards for each organisation. In the next section,

we offer a short explanation of the importance of the board within our examination of the relationship between providers and receivers.

6: Importance of the board

We noted in our 2017 study that some locations had not always appreciated the value and potential of the Board. Of course, boards are not uniform in all locations. They can range from collections of politicians reinforcing their provider role (that is it is a condition of receipt of public support that a certain percentage of the board are politicians representing the providers) to others that are simply collections of interested people and financial supporters. Our discussion of the development of provision recognises these differences, but also, we should stress that in order for the location to develop further, the board must match their need — and this includes political participation — in order for the sector to move forwards. If a board is not managed as a *resource* for the organisation, then we see this as a wasted opportunity and not in the best interests of the development of the organisation and the sector as a whole.

A board should be able to mediate (advise and interpret) 'top-down' policy and also guide and support 'bottom-up' responses from the management (and perhaps other local contributors). A good board should not be rigid and formal but build towards reflecting and supporting local need. Time is needed for every arts/creative institution to develop and mature with an effective board and it is through the board and their local knowledge (together with their technical knowledge) that providers should convince themselves of the maturity of the particular organisation under scrutiny.

The evidence from our empirical study reveals that a good working, well-balanced board can be a vital and important asset for any arts/cultural organisation. This requires the existing board and management team to frequently audit both their internal and external needs, and this focus should be both current and future-oriented. As the organisation and sector evolves, and thereafter devolves, so must the board match this need and provide appropriate support. An effective board mediates both internally and externally —

internally they can provide technical expert support to guide and monitor; externally they can peruse the environment, market the organisation and explore new opportunities. Thus, board members should be appointed to fulfil these range of roles. Furthermore, some board members might be on multiple boards (if not conflictual) and this can be very useful in 'pooling' resources and other collaborative opportunities. It should also be stressed that like all employees, boards and their members must also conform to the principles of cultural governance and therefore act in an accountable and transparent manner. As Former director of the New York Lincoln Center for performing arts once stated "In organizations of all kinds, good governance starts with the board of directors". (Harvard School of Law forum, 2012).

Discussion

Let us start with a quote from Katherine Groninger (2016), who offers in her PhD thesis an opening summary of the guise of what is normally expected from cultural governance in the museum sector: 'Museums are complex organizations maintained on behalf of the public trust. Reliant on funding and community support to thrive, museums must be accountable for financial and ethical decisions to help secure that public trust. To demonstrate compliance with expected standards, institutions are compelled to report and explain their actions. Museum accountability requires institutions to establish an internal structure whereby decisions are made, while being held externally to account for those decisions. Continuous internal and external assessment links a museum's values to its conduct. Achieving accountability requires inculcating ethical codes and establishing controls throughout the museum'. (2016:1).

This description captures the character of governance as it is proposed in the corporate sector. Its emphasis is explicitly on control, accountability and transparency. Yet, we might also argue that a large section of the other activities typical for the cultural sector that enable these to be undertaken seem not to be fully appreciated. The cultural governance process as described by Groninger ignores the full character of what constitutes the nature and essence of an

organisation from the cultural sector. We could argue that Groninger's description could easily be talking about an organisation from another sector, as it does not seem to be appreciating the particular characteristics from the arts and culture. Our argument in this paper is that a frame that is too rigid (control-oriented) can only allow for development to a certain limited level – in Figure 1 we suggest evolution can stop at the equivalent of P4 and this may be an appropriate goal for some environments where control is perceived to be important.

For these locations P4 represents a stopping point. Other locations perceive stages P3 and P4 as evidence of increased formalisation but at the same time increasing awareness of the limitations of the borrowed governance process (for example, from UK or the West) and this is a top-down approach. A process that was not developed for their context, but for a different set of needs and accordingly; 'cracks' start to appear in the borrowed governance approach. P5 represents a realisation that a location possesses the confidence and the ability to move towards a more devolved approach. However, such a move also is likely to require a different frame of support — one that is less about hierarchical control and more about collaborative support (and in particular employing dialogue as the critical tool for change). This is a key mind-set change and should only be considered where all the stakeholders/actors are ready to move in this direction.

Our underlying argument is that the stakeholders at each location are best placed to identify the development towards a frame that is appropriate for them. Our above discussion suggests that this is likely to lead to a flexible frame of support capable of moving toward a self-regulatory practice within an acceptable frame of practice.

We can conclude from our study, and continuing conversations (and a recent more local study see Van Doninck & Schramme, 2019) following the study, that some form of cultural governance is inevitable. Providers (varying levels of government) will likely continue to emphasise that there are limits to the resources available for supporting the arts and cultural sector. In these

circumstances, competition is inevitable and this will lead to selective support measures. Certainly, in terms of our discussion the devolutionary phase of the model presented in this paper identifies that the issues of trust for the individual as compared to the organisation are complex and diverse.

Regardless of whether an individual (an artist) or a cultural organisation is looking for support it is likely that for all the role and contribution of the board in building trust should be retained and continue to be a required feature. However, the evidence from our earlier empirical study suggests that the value, role and potential of the board was not always appreciated in the cultural sector. However, boards can play an active role, acting as effective mediators, in both providing a supporting role towards the organisation and providing specific often 'independent' information to the providers (different governance levels). The implications are clear, board memberships should reflect the needs of the organisation and this may have implications for political participation. In other words, as the organisation evolves so must the skills-base of the board (match and anticipate) both to the internal and external needs of the specific arts and cultural organisation. Therefore, the evolution of the board from the early stages (when friends/supporters may make up the main constituents of the board) towards professional support, is necessary and thus appropriate mechanisms for training and support need to be part of the spectrum of support provided from different governmental levels. However, we would also argue that if there are problems in finding and appointing appropriate board members, this is also an in important factor in the quality of the devolved arts/cultural organisation to consider.

Conclusion

At this point we must conclude our examination. Our purpose here has been to review and argue for the future development of cultural governance. We argued that cultural governance in the current global economic and political context is dominated by a mind-set of measurement. We are concerned that this mind-set although in the short term can be valuable, however in the medium/long-term is inhibitory,

especially if these tools are not developed to match the current and future needs of this sector.

We suggest that there are two main questions to understand the process of good governance in the cultural sector. Firstly, is cultural governance always about accountability and transparency, and is the only way to achieve this through close control? Or is cultural governance closer to a process of hierarchal control, leading towards relational support? Relational support and dialogue where the same principles of cultural governance persist – clear division of roles, transparency, check and balances - but here in terms of reciprocal trust and responsibility.

Secondly, is good governance in the cultural sector not more about the appreciation and the contribution of the intangibles in combination with the tangibles? If so, what mechanisms need to be established in order to appreciate this breadth and depth of character for the arts and cultural sectors? Therefore, our account here attempts to present an approach that reflects a more flexible frame – one that meets local need – whether provider or receiver – and most importantly one that facilitates the arts and cultural sector to grow without retribution.

This is only possible if the level of institutional trust is high enough and if the board is playing its role as a mediator between the providers and the receivers. Yet, we also acknowledge that further empirical research is necessary to elaborate our frame further so that it becomes a more valuable resource.

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The democratic development potential of a cultural ecosystem approach

Victoria Barker

Article Information

Abstract

Culture is increasingly being deployed as a tool to deliver on development policy. This article understands 'development' as a process rather than simply an outcome — not unlike how culture has been understood (and has a long history of such) as a 'noun of process' (Williams, 1976: 87). This has been usefully summed up by Duxbury, Kangas & De Beukelaer (1999), referencing Sen as the underlying idea that 'development should not be considered as a finality (generally expressed in a monetary value derived from work) but the extent to which people are able to participate in political, social and economic life' (2017: 216). Development policy encompasses a broad range of foci from the industrial and economic to sustainable and Human Development agendas. Cultural policy itself is now predominantly framed within a model of economic growth, which limits opportunities to discuss more inclusive, accessible and participatory aspects that form this article's interest in a specifically democratic form of development. This article expands on this interest in the context of the potential for cultural policy to facilitate inclusive relationships from local to international scale, and to broaden the discussion of 'growth' beyond the economic — using the 'cultural ecosystem'.

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Culture and development are two complex ideas that create a confusing intersection.
(Pratt, 2015: p. 512)

The reliance on culture as a tool to deliver sustainable development goals as well as inclusive economic growth is a notable aspiration at UN, European and UK policy levels (UNESCO / UNDP, 2013, United Cities and Local Governments, 2018; Core Cities, 2019). Indeed, culture has developed an increasingly visible position within the sustainability agenda, being situated as an additional pillar of development (Hawkes, 2001), and to being placed as "not just the fourth pillar but the central pillar" around which stand other aspects of transformative development (UNESCO / UNDP, 2013). Culture has, for its advocates at least, become a key driver and enabler of both human and sustainable development discourse and policy, explicitly in the approach to developing and delivering the broad areas of UN Sustainable Development Goals (Wiktor-Mach, 2018, Duxbury, Kangas & De Beukelaer, 2017). The notion of 'cultural development' itself — aside from the role of culture "in" development — is also increasingly understood in terms of providing effective ways of 'balancing cultural and economic policy objectives' (Duxbury, Kangas & De Beukelaer, 2017: 217).

This history of 'connection' between culture and development is problematic for some (de Beukelaer, 2015) particularly given the flexibility of the terms (Wiktor-Mach, 2018) and the discrepancies in concepts and frameworks (Duxbury, Kangas & De Beukelaer, 2017). This conceptual fluidity has also been seen in discussions of the terminology and definitions of the cultural and creative industries, and furthermore their implicit and explicit value-framings (Gross and Wilson, 2018, Hewison, 2014, Garnham, 2005, Flew, 2010). Arguments around the instrumental uses of culture notwithstanding (Belfiore and Bennett, 2008, Belfiore, 2012), the integration of culture within the development agenda pushes debates beyond established cultural policy approaches, focused on consistency of trade and economic growth (which emerged as an impact of World Trade Organisation free trade agreements and market-led policy approaches: Pratt 2015, Duxbury, Kangas & De Beukelaer,

2017). Further, it opens up the possibility of other impacts and benefits of cultural policy and related activities. Within a development context that seeks to broaden opportunity, the broadening of values and impacts is important; as Pratt points out, the 'flattening' of cultural policy through a consistent trade approach 'can serve to reinforce existing or historic inequalities, and to generate new ones' (2015: 511) and poses a risk to development. Counter to this is the view expressed by Wiktor-Mach that 'bringing culture into the centre of development implies also democratisation of all policies and actions' (2018: 10), but this is perhaps to oversimplify issues around cultural reproduction and access that have been explored in detail elsewhere. In this article, the discussion below is focused on the view of democratic development described above, and considers more inclusive, accessible and participatory aspects of culture than existing economic or industrial development approaches.

An exposition of the debates around culture and development policy could identify four areas of tension (explored in this article). The first of these is around the struggle to move beyond linear approaches to policymaking and development. This linearity is seen in a UK cultural policy context which continues to entertain a struggle between 'the twin logics of paternalism (the deficit model) and the market (the creative industries)' (Gross and Wilson, 2018: 10). Discussion of the UN Sustainable Development Goals outlines a similar conceptual shift toward a broader vision of 'a desirable future that is equitable, inclusive, peaceful, and environmentally sustainable. This bold vision demands creative approaches, *beyond the typical linear and sectoral* ones that most countries have been used to in recent decades' (UNESCO, 2017). This connects to the second area of consideration, that of the *values* driving the policy making agenda, which are frequently in tension with the 'values as outcomes' of that policy and activity. This is hugely complex and contested but broader value drivers of policy that extend beyond the economic are frequently referenced (Wiktor-Mach, 2018, Duxbury, Kangas & De Beukelaer, 2017), because 'it is the richness of people's lives, not the richness of economies that ultimately is valuable to people' (UNDP, 2016:

25). The concept of value and richness in lived experience highlights the third area of tension explored in this article, which sits between the national (and indeed international) approaches to policymaking and the locally situated and experienced realities of both culture and development. The need for a locally sympathetic approach was identified within UNESCO's focus on the creative industries and development, which found that 'many of the diverse pathways to development through the culture and creative industries […] are to be found at subnational level in cities and regions' (UNESCO / UNDP, 2013: 10). Wiktor-Mach points out that this is the very aspect that leads to the inclusion of culture in and across the development agenda because the 'sensitivity to cultural circumstances is described as a contribution of culture towards sustainability' (2018: 7). However, the local-national scale presents particular difficulties. The fourth area of tension is between growth and inclusion, which captures the value debates as well as the spatial scale. This also fits a broader trend toward 'cohesion policy' for structural transformation and inclusive growth.

'The challenge for EU and Member State policymakers is to develop or adapt policy frameworks and strategies that will stimulate growth, but in a manner that also ensures greater inclusiveness'
(Bachtler et al, 2019: 7)

Policy specifically related to development has increasingly referenced culture either as an enabler or delivery mechanism; as a further pillar of development in its own right; and as an outcome of the process. The debates that have been generated by this have identified a range of drivers of cultural activity that align with the areas of tension set out – 'not just financial' value, process rather than outcome, and the opportunity to more equitably and inclusively address areas of need. These drivers may explain the relatively recent emergence of ecological metaphors to capture the complex web of connections and actors. This could also be explained in relation to a trend in ecological terminology in discussions of sustainable development, as well as this being a key area of outcomes (Wiktor-Mach, 2018). In the past decade, there have been a number of references to 'ecosystem' in relation to culture, rather than in its original environmental context. This article explores these emerging 'ecosystem' approaches and asks whether they offer a response to this context and a way through the 'confusing intersection' of culture and development identified by Pratt (2015).

The emergence of ecosystem in this context

In 2014, a United Nations Industrial Development Organisation (UNIDO) report focused on rural economies introduced the creative ecosystem as a core approach, developing this from the triple helix model of 'university – government – industry' engagement and the concept of creative clusters to develop economic activity based on creative products and services (Bakalli, 2014). However, where the report does attempt a definition, it is extensive and ambitious without being specific:

'A creative ecosystem is a combination of enterprises, training centres, academia and research units engaged in public and private synergies around joint creative projects in a given immaterial space that can be achieved through the links the system's members maintain between them. This system of partnerships is organized to create a pool from where innovative, creative ideas are extracted that can eventually be used by existing companies.'
(Bakalli, 2014: 43)

The 2014 UNIDO working paper seeks to use ecosystem as a framework for supporting the (local) development of the (global) creative industries, and outlines its aim to: 'develop a holistic approach to CI that can be tailored to the relevant country, region or city. The approach put forward in this paper consists of measures aimed at developing CIs at the macro, meso and micro levels to facilitate inclusive and sustainable developments relevant to the industry.'
(Bakalli, 2014: 11)

The 'creative ecosystem' term is used here to describe an approach that develops innovation and creativity, and as a framework for supporting sustainable and inclusive industrial development through entrepreneurship. In introducing a creative ecosystem approach, the working paper considers clusters in relation to the ecosystem and

highlights ways in which an ecosystem has spillover effects to other sub-sectors and areas. The use of these allied concepts is worthy of some further scrutiny before considering how the ecosystem model in this context addresses the tensions around linearity, values, locality and inclusivity highlighted above.

Creative clusters are discussed as a sub-set of the industrial clusters approach (Pratt, 2003) in which related businesses are transactionally or geographically connected, generating positive effects on competition and co-operation (Pratt, 2004). This originated with a focus on the competitive advantage of the individual firm (Porter, 1990), and the creative clusters agenda specifically brings together the policy aspiration of promoting local competitive advantage with a focus on the creative industries as a high-growth sector. In the UNIDO discussion there is a contradiction between creative clusters being 'misleadingly considered a sub-set of industrial clusters' and also 'developed as a sub-set of industrial clusters' (2014: 41). Clusters are also seen 'as part of or as a sub-sector of a creative ecosystem, where more than one cluster may exist.' (2014: 46). This is discussed as a previous model for innovation and entrepreneurship support. Ecosystem is seen here as an opportunity for more inclusive approaches to sustainable development.

In a Europe-wide literature review, Tom Fleming [with Andrew Erskine] defined creative and cultural spillovers as 'the process by which activity in the arts, culture and creative industries has a subsequent broader impact on places, society or the economy through the overflow of concepts, ideas, skills, knowledge and different types of capital' (2015: 15). Fleming (2015) went on to categorise three broad types of spillover effects, covering impacts on knowledge, industry and network. In a UK-based arts context, a review for Arts Council England identified four broad spillover 'impacts', all linked to additional spending or income generation: tourism spend, developing commercial growth, improving productivity, or contributing to economic regeneration (Centre for Economics and Business Research, 2015). This focus on 'spillover as financial flow' is criticised by Holden (2015), who

considers that spillovers, or any kind of intended or unintended consequences of activity, have a wider potential benefit.

The varied use of 'ecosystem' in the UNIDO working paper therefore typifies the issue of terminological elasticity 'becoming a liability to the design and advancement of policy' (Duxbury, Kangas & De Beukelaer, 2017: 220). Whilst it is clear that this creative ecosystem approach has the ambition to be 'a more comprehensive tool for CI development and governance', and is not based on geographical concentration, the approach does not fully address the challenges of locality and inclusivity (Bakalli, 2014: 46). The proposed ecosystem approach also extends the 'traditional binomial structure [of public-private partnerships] to embrace two other dimensions that are intertwined in the creative ecosystem: communities and people and the education sector (universities, knowledge-based and research institutions and vocational training centres)' (2014: 47). However, this is not fully explored in the model that is presented.

Cultural ecosystem elsewhere

This brief insight typifies a number of the challenges in the wider context of emerging ecosystem approaches. The connections with clustering and regional innovation draw from, and reflect significant debates within, economic geography; and the discussion of networks, collaborations and interdependencies are frequently seen in both cultural policy and entrepreneurship approaches. Whilst the terms *ecosystem* and *ecology* originate from the natural sciences, the terms are increasingly and interchangeably used in business, cultural policy and economic cluster debates (Gollmitzer and Murray, 2008, Gong and Hassink, 2016, Hearn et al., 2007, Holden, 2015, Mack and Mayer, 2015, Markusen et al., 2011, Moore, 1996, Spigel, 2015). The cultural and creative setting has been conceptualised in a variety of ways in order to understand the 'mixed economy of forms' (Jeffcutt, 2004: 69) that operate within it, and ecological approaches have increasingly been employed to understand the structure and approaches of the creative industries. The following discussion explores four areas of

possibility, related to the wider ecological turn in terminology in the sector:

- the complexity of the sector that extends beyond a 'production chain' approach;
- the need for a term that extends beyond financial approaches to value;
- the instrumental application of cultural and creative industries to innovation policy and place-based strategies; and
- the recognition that there is a complex and interconnected matrix of actors within and across the sector.

The following discussion explores these four aspects in more detail, with reference to wider instances of the creative and cultural ecosystem, to explore the possibilities of the approach in relation to the tensions evident in discussions of culture and development.

Ecosystem as more than production chain

There are several approaches to 'ecosystem' in a production and business context which typify a growing shift toward the ecological in this field, as well as in cultural policy (Hearn and Pace, 2006). The ecosystem has been discussed as an approach to business strategy (Isenberg, 2011, Gossain and Kandiah, 1998, Moore, 1996), and as a support infrastructure for high growth enterprises. Moore's ecosystem (1996) represented the origin of the ecosystem approaches in a business context and placed the individual organisation at the centre. Hearn and Pace stress the importance, for a business, of knowing the ecosystem in which they operate, and Moore's concept of 'co-evolution' 'where for any company to really evolve its capabilities, others must evolve in support' (2006: 61). Whilst Hearn and Pace use 'ecology' rather than 'ecosystem', their component parts have clear parallels, and underpin the importance of value within the concept. Hearn and Pace's (2006) ecology perspective also expands the value creation process beyond the immediate organisation, and beyond the linear value chain approach. Their *value-creating ecology* 'encompasses the idea of an environment of factors that engender and create value without necessarily being part of the first order factors of productivity' (Hearn and Pace, 2006: 57).

Pratt, in seeking to describe how the creative industries generate clusters, concludes that production chains present an over-simplified approach and that:

'the metaphor of a **web** rather than a chain is perhaps a more appropriate one. The project of gaining an overview of the whole process or web is more challenging than simply acknowledging inputs and outputs; here we need to investigate the quality as well as the quantity of these linkages. Lest we become confused by the usage of the term 'mapping' here, we should be clear that creative industry mapping documents have thus far simply measured quantities at the nodes such as employment and output (see DCMS, 2001); **investigating the characteristics of the flows and relationships is a far more challenging task**.'
(Pratt, 2003: 60)

This early presentation of 'the creative industries ecosystem' (Pratt, 2003: 61), sought to plot the relationships between different points in the creative production chain. This relationship plotting principle is intended to highlight the places and functions where the creative industries form clusters, to make the point that any approach to system governance needs to acknowledge that clusters are self-generating. Flew (2010) points out that the general concept of clusters has become more flexible over time, and the distinction between different types of cluster (whether vertical as a result of supply chain integration, or horizontal as a result of co-location) has been diluted, resulting in a potentially less meaningful term that nonetheless remains focused on economic value.

'While clusters are part of the creative ecosystem, development practitioners will benefit from a more holistic approach that incorporates clusters and takes into account the bigger picture' (Bakalli, 2014: 41).

The discussion above highlights how ecosystem and other ecological approaches to the sector have emerged, and are developing, to reflect the web of relationships that exist beyond the 'simplicity' of a production chain. This is also an important reflection in relation to the place-based

approaches discussed below around ecosystems and urban regeneration. The term is also being deployed in the UK context to reflect 'complex networks operating within and across a range of scales, including home, school, the borough, the region, and the nation', which develops from a 'capabilities' (and Human Development) approach with a particular focus on cultural learning for young people (Wilson and Gross, 2017: 3). In this sense, we can see how the term is beginning to be used to not only explore the non-linear nature of connections, but also to capture the range of values and motivations that drive these connections.

Ecosystem as more than economics

In the UK context, policies supporting the creative and cultural industries have been shaped by an economic growth perspective, using an approach to the 'creative economy' centred on the exploitation of intellectual property (Howkins 2001), and explored in more detailed work on cultural economics (Bakhshi and Throsby, 2010, Throsby, 2008). This political economy perspective inevitably stems from the generation of the creative industries as a product of an economic growth agenda, but this is not to decry the significance of the cultural studies viewpoint that encompasses wider concepts of the public value (Holden, 2006) and the 'social potential' (Reid et al., 2010: 11) of the arts and culture. Holden identifies the emergence of the 'cultural ecology' as having emerged in the mid-2000s, which he aligns with this desire to articulate the wider non-financial values of cultural production and participation (2015). The terminology of arts ecology describes a system of organisations 'driven by intrinsic arts and cultural activities; expressive of a social relationship between producers and audiences; strongly linked to public investment and not-for-profit activities' (Fleming and Erskine, 2011: 6). Whilst this description does seem to recognise wider approaches to value, this definition of ecology is also clearly located within an economic perspective, as set out by Fleming and Erskine (2011) who, on behalf of the Arts Council, suggested that the arts ecology provided:

'the bedrock for (or is it lifeblood to?) a dynamic, growing and increasingly competitive creative

economy, which in turn delivers value for the wider national interest'
(Fleming and Erskine, 2011: 11)

Building on this 'arts ecology' approach focused on the inter-relationships between publicly-funded arts and the creative economy, Neelands et al. (2015) went on to use 'ecosystem' as a metaphor to 'stress the interdependence of the economically successful parts of the creative industries with [...] publicly supported sub-sectors' (2015: 20). However, as Holden has highlighted, and as explored in more detail below, these links and interdependencies are more frequently assumed than evidenced (2015).

Whilst the overall purpose behind this *particular* use of the ecosystem metaphor — the generation of cultural wellbeing as well as economic growth and opportunity — is evident, there is less clarity on the specific make-up or framework of this view of a 'cultural and creative industries ecosystem' (Neelands et al., 2015). The report also suggests that the ecosystem describes a flow between the commercial and cultural 'ends' of the overall system, which reflects a more linear perspective than the other system references that are used. As with the approach of Jeffcutt (2004) and in the UNIDO example (Bakalli, 2014), the descriptions of the ecosystem here are multiple and overlapping. In one instance the ecosystem is described as being made up of 'sectors', and in diagram form it is shown as being made up of the existing creative industries sub-sectors (Neelands et al., 2015). The ecosystem as a whole is noted as being vulnerable to 'a lack of sustainable infrastructure' and education and skills are critical to its foundations (Neelands et al., 2015: 44).

In relation to the challenges that frame this article, these shifts toward ecological terminology begin to push beyond the linear understandings of the system, and suggest that there are wider values both driving and emerging from the approach. However, these examples do not fully encompass the discussions around these wider values, nor the potential for inclusivity, despite suggesting a more holistic approach.

Ecosystems of urban regeneration

Policy interest in boosting economic and regional growth from the creative sector's production and

organisational approaches has been seen in a range of approaches, from *creative clusters* (Bakalli, 2014, Boix et. al., 2015, BOP Consulting, 2013, Chapain and Comunian, 2010, Pratt, 2003), the *creative city* (Evans, 2009, Landry and Bianchini, 1995, Pratt, 2008), *creative hubs* (Dovey and Pratt, 2016, Dovey, et. al., 2016, Lampel and Germain, 2016) and, more latterly, *spillovers* (Chapain, et. al., 2010, Fleming, 2015). These approaches have garnered significant policy traction despite the academic critique of some of the models (Wiktor-Mach, 2018). Rather than re-rehearse the arguments well covered elsewhere in relation to these approaches, this section covers key points in an attempt to outline how they limit the opportunity to discuss more inclusive, accessible and participatory — that is to say, democratic — approaches to development.

The 'creative city' concept featured as a local regeneration approach in the work of Landry and Bianchini (1995), who set out an array of areas in which policy and change-makers can develop creativity in a city. However, they did not explore the definition of a creative city, nor the reasons why this should be desirable. Despite this, it became a popular policy goal, but was later criticised by Evans (2009) for the frequency of 'transfer and emulation' approaches whereby creative city schemes were (often unsuccessfully) templated rather than generated from the existing creative and city milieu. Creative hubs represent a related concept, being 'a universal but slippery term to label centres of creative enterprise, representing many different shapes, sizes and agendas' (Dovey and Pratt, 2016: 2). In contradiction to the criticism of creative city initiatives, Dovey and Pratt (2016) note that the term has been applied to a wide range of very different approaches and has also been 'unhelpfully conflated with other types of industrial agglomeration that are closely aligned to the cluster concept' (2016: 10). There is a suggestion that despite their popularity with policy-makers, sector-based approaches such as creative cities or hubs are antithetical to the entrepreneurial attitudes that they seek to generate and foster:

'One of the unrecognised problems in sectoral cluster strategies is that picking sectors for preferable attention, by a top-down analysis of comparative advantage, actually dulls the entrepreneurial spirit.' (Isenberg, 2011: 4)

Creative ecosystem approaches are not 'restricted' by geography in the same way as creative cities and hubs, as well as allowing recognition of a wider value framing than the creative cluster's economic approach. This was noted by Fleming et al. who point out that 'taking an ecosystem approach to analysing the interplay of complex factors also supports our understanding of the role that culture plays in place attractiveness' (2015: 8). Pratt also identifies that in this sector context, the 'literature on industrial districts and localization [highlights] a complex *ecosystem* of creative industries that embed them in place' (2015: 509). Creative ecosystems, then, are locally embedded, but are also an opportunity to map the multiple interdependencies that characterise the sector, as discussed below.

Ecosystems as maps of interdependencies

In discussing all three of the preceding areas of potential, there have been multiple references to connections, networks and systems. As noted, the interdependencies here are often assumed rather than mapped specifically (Holden, 2015) but there have been a small number of place-specific approaches to detailing a creative ecosystem. The earliest example of this was Jeffcutt's policy-focused approach which undertook a regional study of the creative industries in Northern Ireland (2004), using surveys to identify creative businesses, their scale and their support needs. Here, the creative ecosystem was coined as a metaphor to capture the key elements of creative business that needed to be supported by policy at regional level. Jeffcutt's approach focused on a sector with 'a preponderance of micro-businesses with a complex portfolio of development needs, and [...] not being supported in a coherent and integrated manner.' (2004: 76). The creative industries are described as trans-sectoral, trans-professional and trans-governmental in their interconnectivity and breadth, which leans toward a broader ecosystem approach. Whilst Jeffcutt did not develop a full framework for this, he suggests

that four key features of this ecosystem include knowledge interfaces, mixtures of expertise, technology and organisation. These are all viewed from the perspective of the enterprise, and we can read into this that the organisation sits at the centre of its own ecosystem, in the same model as Moore's business approach above.

Despite the looseness of the metaphor, and thus the difficulty in applying it to other regions or turning it into a policy approach, Jeffcutt recommended five areas of activity to develop the ecosystem as a whole: *learning* (to encourage new entrants); *opportunity* (contributing to workforce development); *business* (including new and existing enterprise development); *sector infrastructure*; and *government*. On this last aspect, Jeffcutt specifically notes the need for joined up sector policy.

The idea of a 'value-creating ecology' approach to capture the complexity and interconnectedness of creative industry value chains (Hearn et. al., 2007) has also been used to explore the relationship between publicly funded arts / culture and the creative economy (Holden, 2007). Hearn et. al. (2007) consider the operational aspects of their approach with reference to the critical importance of network theory, because 'in a value creating ecology the constellation of firms are (sic) dynamic and value flow is multi-directional and works through clusters of networks' (Hearn et al., 2007: 421).

Exemplifying this perspective, Holden's work on cultural ecology describing this as 'the living, evolving network of artists, cultural organisations and venues co-operating in many fruitful partnerships – artistic, structural and financial' (Holden, 2015: 6) and offers a UK focused approach which discusses the changing and complex relationships between the three 'spheres' of publicly funded, commercial and homemade culture (2015). Holden works with Markusen's definition of the 'arts and cultural ecology' developed in California:

'the complex interdependencies that shape the demand for and production of arts and cultural offerings.'
(Markusen et al., 2011: 10)

Markusen's approach to documenting this

Californian state ecology was comprehensive and multi-method, using data from state and national sources to set out the budgets, sub-sectors and impacts of non-profit making arts and cultural organisations. This was followed up by interviews to explore relationships and causal insights (Markusen et al., 2011). This approach deliberately focused on non-profit making organisations, which is useful as it begins to extend beyond economic value to consider the consumption and production of culture and the values inherent in this. Holden also stressed that the cultural ecology 'cannot be understood without taking into account free labour and emotional rewards' (2015: 11). Holden's ecology of culture investigation also suggests that there is considerable variation across the sector because 'despite their many interconnections, cultural sub-sectors operate in very different ways. Each artform has its own micro-ecologies.' (2015: 5). Holden does not follow the same detailed and empirical approach as Markusen but explores the concept through interviews with stakeholders in the cultural sector, and generates perspectives on the concept of ecology from these discussions. By way of conclusion Holden proposed three visual models of the cultural ecology: cultural ecology as a cycle of regeneration (which charts a process); network diagrams (which require nodes in order to map connections); and cultural ecology as interacting roles (which categorises actors within the system).

The first of these approaches, cultural ecology as a cycle of regeneration, reflects the dynamic and cyclical nature of cultural and creative production. The model moves through five stages: creation, curation, collection, conservation, and revival (Holden, 2015). The consumer or audience side of culture, deemed vital by Holden, is reflected in the 'collection' phase, which is considered to incorporate audience engagement. Whilst this approach does categorise aspects of a cultural ecology, it documents the *process* rather than the structure of the system. Holden also discusses the possibility of using network diagrams to visualise the whole of the cultural ecology, but concludes that this is not a useful approach at this level 'because the network connections would become so dense, so extensive, and so various in quality as

to lose meaning' (Holden, 2015: 27). This raises an important point about the need to clarify the purpose of mapping the ecology (or ecosystem), which then allows decisions to be made about 'where to draw the boundaries; the crossover between local and artform or sectoral networks; over-simplification; and capturing the quality of the network' (Holden, 2015: 29). Holden's third approach, which sets out a model of four cultural ecology roles, offers the potential to categorise and map out the entities within and across the creative ecosystem. Holden also points out that many individuals or organisations in the cultural ecology will fulfil more than one of these roles but will 'tend to have a dominant activity' (2015: 29). As a whole, the cultural ecology is seen to operate across the public and privately funded cultural and creative sector and needs a balance of all of these roles in order to function.

More recently, Gross and Wilson (2018) have begun to discuss cultural opportunity as an ecological phenomenon, which 'needs to be understood not as located within single organisations or spaces, but through the interconnections and interdependencies of cultural resources of many kinds' (2018: 6). This builds thematically on Holden's approach discussed above, as well as bringing in the capabilities approach more frequently referenced in development discussions.

Ecosystem's democratic potential

The UNIDO working paper that prompted this discussion identified an ambition for an holistic ecosystem that supported sustainable development. Their debate implied that the creative ecosystem can be 'created' through policy incentives and interventions, which sets up a specific epistemological orientation toward the concept itself, but also, critically, perpetuates the economic value framing of the broader trade system. Therefore, a wider approach to development is seen as necessary in order to bring participatory and representative perspectives — the democratic development agenda.

The discussion in this article has explored the ways in which other ecosystem metaphors have been deployed to work against linear and limited framings of the cultural and creative sector. This in turn has sparked consideration of the ways in which the ecosystem approach might offer an even more inclusive, accessible and participatory approach that can be seen as a democratic approach to development. It is not yet sufficiently clear whether and how ecosystem approaches do allow more participation and engagement in the processes of culture and creativity, but this is a direction of investigation within cultural policy in the UK. There is certainly potential in using ecosystem as a more holistic description of the creative and cultural setting to support development discussions, but there is more work required in a number of areas to fully explore this.

An entrepreneurial perspective has been included in the above discussions as it forms part of the framing context for development policy, despite the economic focus criticised above. In describing entrepreneurial ecosystems Spigel and others identify the ways in which inputs and contextual factors are equally as important as outputs (Korhonen et al., 2007, Mason and Brown, 2014, Spigel, 2015). We can connect this to the debates rehearsed above around creative and cultural spillovers — as distinct from industrial production chain spillovers — and highlight that inputs and context is a missing aspect from the culture / development discussion thus far. Ecosystem approaches then, might offer a way of developing the more holistic picture called for, but not yet developed, in the UNIDO working paper, as well as taking into account the range of shaping factors that create and influence an ecosystem and those within it. A more holistic approach to ecosystem should also encourage consideration of the enabling and supporting factors beyond the entrepreneurial growth mind-set that currently acts as a limitation to development.

The creative ecosystem also acknowledges a range of connections that may not be directly connected to the creative product or service, which broadens the scope beyond the cluster approaches discussed above. The geographical aspect to this is also discussed, partly in relation to the ways in which culture has been seen by policy as the catalyst for urban and place-based regeneration. The creative ecosystem approaches discussed above, as well as being broader than the clustering concept of economic geography, are

more rooted in the specific place or location which reflects a more 'bottom-up' approach to the inclusion of culture. The cultural or creative ecosystem is noted as being rooted in place, which pushes toward a deeper consideration of the assets and values of a location in a more inclusive and potentially democratic manner. The connections between ecosystem aspects are also critical, in relation to both place specificity, and the untraded interdependencies and spillover effects that ensue. Whilst spillovers in the creative context do extend beyond economic value as discussed in Fleming's review (2015), an ecosystem approach could allow consideration of inputs as well as outputs, the lack of which has been criticised in spillover discussions to date. There also seems to be a developmental focus to the creative ecosystem that recognises the 'feeder' aspects to the system over time. In so doing, an ecosystem approach may also work toward a more sustainable approach rather than being focused on shorter-term economic metrics. The evidence base around spillovers in the creative industry context has not yet been sufficiently advanced as to take into account the complexity of inputs as well as outputs. This offers the possibility for a creative ecosystem approach to consider spillovers, inputs and outputs as valid features within the component parts of the model.

Ecosystem approaches begin to move the discussion toward a broader understanding of value(s) and drivers to activity, whether production or consumption. The issue of terminological elasticity is still an issue for the ecosystem term itself, which needs further investigation, or maturity of understanding and approach. Wilson and Gross point out that 'one of the strengths of ecological language and thought – in its application to the analysis of the cultural sector – is precisely that it provides tools with which to investigate the[se] complexities' (2017: 5). Gross and Wilson also discuss ecological approaches in the context of a capabilities approach (2018), advocating for a cultural opportunity model within the cultural democracy tradition.

What *is* common across the ecosystem approaches focused on the creative sector is their position that the system needs maintenance or development. Jeffcutt (and also Isenberg) maintains that any development strategy needs to be ecological and that this needs to take 'a coherent and integrated approach to the key elements and dynamics of the ecosystem' (Jeffcutt, 2004: 77). Recognition of these ecosystem 'dynamics' suggests that this approach recognises the complexity of creative production and offers the opportunity to better understand what Lash and Urry describe as the 'rich nexus of markets linking small firms' (Lash and Urry, 1994: 114) that is characteristic of the cultural and creative sector. However, Jeffcutt warns that there is no 'magic bullet' for policy (2004). Leadbeater and Oakley articulated the challenge for policy makers in that they 'lack the knowledge, time and tools to help develop a cluster of hundreds of independent micro-businesses' (1999: 18). As shown above there is still relevance in the question of how policy can better understand and support micro-scale businesses. The emerging ecosystem discussion – in the cultural and creative context – seems to offer an opportunity to do that. However, emerging thinking about creative and cultural ecosystems suggests that policy references to this to date have not yet fully explored the opportunities presented by the metaphor and its ontological orientation, and there is more to learn from the discussion and application of ecosystem models and approaches.

This article identifies the emergence of an ecosystem approach across European cultural policy, and suggests that to date the use of the metaphor has been limited in relation to the possible development focus that arises. This article takes the perspective that standard economic growth models of the creative industries limit the opportunity to discuss more inclusive, accessible and participatory approaches to development. Such limitations are likely to be damaging to a cultural policy environment that increasingly features place-based and co-creative approaches at a local level, within an international context of sustainable development. In the context of development policy this article has discussed the ways in which 'ecosystem', reframed and more purposefully defined, could

work toward a democratic approach to development. The discussion has shown that the emerging cultural and creative ecosystem approaches encompass the breadth of the system as well as the range of actors and connections within it. In turn, this approach does not prioritise any single value driver in the way that 'industry' privileges economic value drivers such as profit or output. The range and importance of system connections highlights the more inclusive nature of cultural and creative ecosystem approaches.

To return to this article's working approach to 'democratic development', the ecosystem has the potential to recognise multiple approaches to value, whether input or output of the wider system. In this systemic approach, it also acknowledges the complex realities of business across the cultural and creative sector. Both of these factors are steps toward the ecosystem as a model that recognises a more inclusive and participatory approach to value generation that takes into account capacity building through its location-specific nature. Ecosystem as a structure is potentially transformative in the range of opportunities it offers to broaden policy understanding beyond linear approaches to the sector and its development. It does this through recognition of the broader approaches to value both as driver and as output, and by way of its locally-focused and place-specific aspects. The 'cohesion policy' trend identified above, focused on inclusive growth, experiences a tension between growth and inclusion that an ecosystem approach goes some way toward addressing. By offering a wider framing of the development context, this discussion also highlights the challenges to the emerging and developing ecosystem debate and suggests areas in which this developing agenda might consider the challenges of equality, access, inclusivity and participation.

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Animating political protests through artivism in 21st century Nairobi, Kenya

Craig Halliday

Article Information

Abstract

The twenty-first century has seen a rise in the number of protests in Kenya's capital city, Nairobi. These protests are being used to assert the practice of democratic freedoms in face of increasingly repressive controls. This article probes the extent to which contemporary protests use, or are animated through, art and activism (*artivism*). It does so by drawing on 20 months of research in Nairobi (doctoral fieldwork from July 2016 to March 2018), which involved observation and participation in street protests and demonstrations; interviews with twelve artists and activists associated with the social justice organisation PAWA 254, and those responsible for organising street demonstrations; informal interviews with foot soldiers who attend protests and demonstrations; and national/international newsprint, radio and television media. The article argues that artivism's use in protest can be employed to ridicule and mock those in power, it can provide means to mobilise people in novel and often powerful ways, and it has the potential to infuse protest with traits of carnival. But the article also underscores artivism's limitations, such as it potential to divide, antagonise and derail protesters' desired narrative. Given the increasing use of artistic expression by civil society organisations in political protests in Kenya, and indeed across the globe, this article contributes to furthering understandings to artivism's potential in contributing to social change, creating new terrains for political engagement, and the implication this has on democracy.

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Introduction

On Thursday 3rd November 2016, hundreds of people gathered for a demonstration against high-level corruption at Freedom Corner (a section of Nairobi's Uhuru Park, which has long been a site associated with peoples' fight for justice). Grasping placards and donning red T-shirts emblazoned with the protest's slogan, this mass of bodies visually emphasised and collectively embedded feelings of a community. [1] Revolutionary protest songs blasted from a PA system. The words to these tunes – often corruptions of 'traditional' or Christian

petition to Parliament. Signed by civil society organisations the petition demanded the Government's expedient and decisive action against grand scale corruption plaguing Kenya. However, the police violently coerced the protesters out of the park and made arbitrary arrests. Spirits waned. Attempts to reconvene were thwarted.

Unfortunately, the police have regularly disregarded the right of assembly enshrined in Kenya's constitution. Repressive and brutal policing has become normalised. What is evident,

Speeches made at Freedom Corner during the protest 'President Uhuru Act on Corruption Now or Resign': © Craig Halliday

compositions — were echoed by protesters and invigorated through dance. These elements, and the ebullient crowd, created a mood akin to a festival, boosted by artistic theatricality, large effigies and performance. Speaking about corruption the previous month, Kenya's President Uhuru Kenyatta asked: "ladies and gentlemen, what do you want me to do?" [2] Aptly named *President Uhuru Act on Corruption Now or Resign*, the protest retorted Kenyatta's question and together those demonstrating planned to deliver a

nevertheless, is an increase in political protests in Nairobi over the past decade. This spike ties to political scientists' suggestion that since 2011 Africa has experienced a 'third wave' of protests – the first wave having occurred during decolonisation, the second through democratic transitions to multi-party politics in the 1990s. [3] In Kenya, explaining this third wave is complex but certain influences can be identified.

The 1990s was a golden age of popular political activism in Nairobi as civil society ushered in fresh

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[1] Interviews and direct observations of the protest.
[2] Agutu, 2016

[3] Branch & Mampilly, 2015; Mueller, 2018.

hope for democratisation in the postcolonial East African nation.4 In 2002, Kenya's second President Daniel arap Moi's 24 years of authoritarian rule ended. The opposition were victorious at the ballot box, instilling a belief amongst the electorate that formal democratic processes could bring change. Following this was a lull in political activism and popular protests, as there was hope amongst the populace that progressive change would follow. This optimism quickly faded as a result of the post-election violence of 2007/8, which resulted in the deaths of over 1,000 and displacement of 600,000 people. But from this came a new idiom of political consciousness in Kenya which saw alternative discursive practices and physical and online sites for their expression forged.5 Adding to this was the adoption of a progressive constitution in 2010, giving credence to people's fundamental civil and political rights, imparting checks on power, and bringing with it possibilities for reinvigorating democracy in Kenya.6 It has, however, been argued that the Jubilee coalition — which came into power in 2013 , led by Uhuru Kenyatta — has failed in its duty to uphold elements of the constitution, and as such critics point towards a regression of previously made democratic gains.7

It is against this backdrop that one is reminded of the political scientist Gene Sharp's warning that the ending of one regime does not bring utopia, but instead paves the way for continuous efforts to build more just social, economic, and political relationships whilst eradicating other forms of oppression and injustice.8 Kenyans are well aware of the challenge of Gene Sharp and the new wave of political protests happening in Nairobi illustrate this fight for justice and a deepening of democracy.

At one level this is realised through the coming together of bodies on the street who enact their constitutional right to peaceful demonstration.9

However, the late Claude Ake points towards further understanding as to how democracy may be invigorated through protests, and that is by creating new terrains for political engagement.10 As suggested by Ake popular protests can affect society's political consciousness and imaginations, offering revelations to what is possible, whilst providing alternative visions of democracy and development.11

Occurring within Nairobi's 'third-wave' of urban protests are those – like the protest discussed above — associated with their radical use of art and performance. The driving force behind this is the civil society organisation PAWA 254 and Nairobi's emerging middle class, as well as activists and artists for whom such tactics contribute to animating twenty-first century activism. Yet the merging of art and activism in protests and the tactics employed in its use brings with it questions regarding the extent to which *artivism* is successful in animating political protests and its potential role in deepening democracy. Though before turning attention to these questions, considerations into the theoretical debates surrounding the concept of artivism and its associations are firstly taken into account.

Art, activism and carnivalesque protests

In 2011, the photographer-turned-activist, Boniface Mwangi, founded PAWA 254 in Kenya's capital city Nairobi.12 Mwangi's aim for PAWA 254 included the building of activists', creatives' and citizens' capacity to bring about social change through artivism – which is the bridging of art and activism.13 The concept of *artivism* is not specific to Mwangi or PAWA 254 and has similarly been termed as 'activist art',14 'artistic activism',15 'community art',16 'performative democracy'17, 'cultural resistance'18 and 'cultural activism'.19 A

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4 Maupeu, 2010: 373-376.
5 Ogola, 2011: 132-133; Nyabola, 2018: 29.
6 Murunga, Okello & Sjögren, 2014: 6
7 Ghai, 2014; CIVICUS, 2015; Smidt, 2018.
8 Sharp, 1993
9 See The Constitution of Kenya, 2010, Chapter 4, Part 2: 37

10 Ake, 1996.
11 ibid
12 The name 'PAWA254' is a combination of Kiswahili slang for power (PAWA) and Kenya's international dialling code (+254).
13 Mwangi, 2016: 285
14 Danto, 1991; Duncombe & Lambert, 2013; Duncombe, 2016
15 Mouffe, 2007, 2013; Groy,s 2014
16 Cohen-Cruz 2002
17 Weibel, 2015
18 Duncombe, 2002

commonality between these approaches is their focus on the ways in which art provides new understandings of common concerns, and how political action can become creative in its fight against perceived injustice.[20] Artivism often creates new or alternative ways of political intervention and civil disobedience, which moves beyond conventional forms of activism.[21] Also representing a shift from convention is art's detachment from its orthodox home of the gallery and museum and associated accolades. Instead, artivism is concerned with the domain of daily life, and innovatively using public space.[22] Artivism demands that art is not compelled to simply represent change, but instead becomes part of an action which engages with society's transformation. Scholars of artivism suggest that this is achieved by drawing on a range of potentiality: to unite people, to question the status quo, to disrupt everyday life, to instruct or persuade, to improve public understanding of civic issues, and to create new or different physiological experiences.[23] Consequently, it has been argued, artivism with its counter-hegemonic tendencies, represents an important dimension of radical politics.[24]

Interpretations of artivism are, however, not without criticism. For instance, Boris Groys notes that the artworld critiques it as a lowering of aesthetic quality, whereas political scientists criticise it as a distraction from the practical goals of political protest.[25] In response, it can be argued that artivism's interdisciplinary nature and methodology should not be understood within the purview of one subject but rather be seen as an 'indiscipline' in its refusal to be restricted by the discipline of art or political science.[26] This matters because in today's world, as the political theorist Chantelle Mouffe reminds us, political questions are those which affect our everyday lives now and

in the future and, as such, are not issues to be left exclusively in the hands of experts.[27]

As this article will demonstrate, artivism is often theatrical. It can be funny and creative at the same time as it can ridicule and mock; artivism can bring people together in new, creative and often powerful ways, but it can also divide and antagonise. As may be expected of an indiscipline, artivism is at times messy and disordered; but it does, nevertheless, offer opportunities to expand on the ways of engaging with politics and help to both understand and practice social change. The element of artivism apparent in protests happening in Nairobi is expressed by activists as giving protests a 'face-lift'. Furthermore, the atmosphere and aesthetics of these protests are regularly attributed to analogies of carnival by those who participate in them.[28] In the words of one activist:

"There is a notion that demonstrations are violent but when you include symbolism and performance they become like a carnival. People at the protest start having fun… the use of art and performance puts them on a different level. This carnival aspect changes the mood. People are still angry and frustrated – that is why they are there — but the art and performance provides a different way of looking at the problem, it provides a moment when people can also have fun, it kind of ridicules the issues but without losing sight of what we are there for." [29]

Mikhail Bakhtin's theory on medieval carnival in Europe is frequently cited as a framework within which both the global north and south can think about and understand contemporary protests shaped by artistic considerations. In Bakhtin's classic work, *Rabelais and His World* (Russian; 1965), his concept of carnival is characterised by the creation of an alternative space, one typified by freedom, by moments where anything goes, and where lines between performer and spectator are erased. As Bakhtin argues: 'In carnival everyone is an active participant, everyone communes in the carnival act… The laws,

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[19] Verson, 2007; Buser et. al., 2013
[20] Harold, 2007; Buser, et.al., 2013; Weibel, 2015
[21] Jordan, 2016: 2
[22] Purakayastha, 2014: 57; Mesquita, 2015: 495
[23] Cohen-Cruz, 2002: 6; Stern & Seifert, 2009; Bala & Zangl, 2015; Duncombe, 2016: 116
[24] Mouffe, 2007, 2013
[25] Groys, 2014
[26] Jordan, 2016: 2

[27] Mouffe, 2007: 2
[28] Ombati, 2017: 206
[29] Interview with Kimani Nyoike, (29/12/2017).

prohibitions, and restrictions that determine the structure and order of ordinary… life are suspended during carnival'.30 Widening this reading, the art historian Frances Connelly's interpretation of Bakhtin's carnival sees 'the carnivalesque as the voice of the people, as the vehicle of self-expression for the usually suppressed and regulated proletariat.'31 For political theorist Andrew Robinson it is precisely these features which suggest how carnival 'occurs on the border between art and life'.32 It is at this fringe that Bakhtin's concept of carnival blends the fictive and the real, combines mockery, debasement, humour, displays of excess, and an anarchic aesthetic that draws on the grotesque and vulgar.33 Considering the temporality of carnival, other authors write of how for this brief period life escapes the mundane, the world may be turned upside down, and the everyday can be

world and used in contemporary activist initiatives, they have been credited with the ability to oppose repressive forms of government and become a resource for political action.35 Having taken into account the theoretical debates of artivism and the concept of carnival, the following sections relate these to political protests in Nairobi.

Shock, surprise and media stunts

In early 2013, as Kenya's Parliament was coming to a close for the general election to be held in March, the 221 sitting Members of Parliament (MPs) tried to drastically increase their end of term financial bonuses and other perks. Included in this was their request for a State funeral, when the time came. Outraged by MPs' voracious demands and sense of self-entitlement, PAWA 254 organised the protest *State Burial*. According

221 mock coffins are burnt outside Kenya's Parliament Building as part of the protest State Burial: © Joel Lukhovi

© Joe Lukhovi

replaced with visons of utopia.34 When these qualities of carnival are experienced in the real

to one of the organisers: 'the plan was to give MPs the State funeral they wanted.'36 221 mock coffins were arduously made by a group of artists. Painted black, with the words 'State Burial' and

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30 Bakhtin, 1984: 122
31 Connelly, 2003: 9
32 Robinson, 2011
33 Kershaw, 1997:263; Göttke, 2015: 130; O'Leary, 2015: 294
34 Kershaw, 1997: 264; O'Leary, 2015: 294; Bruner, 2005: 141

35 Bruner, 2005:151; Ngoshi, 2016: 54
36 Interview with activist Martin Njuguna Mugo.

'Ballot Revolution' written across them, the coffins were delivered to Uhuru Park on January 16th 2013.

As hundreds of protesters gathered that morning an overt parody of MPs' demands for a State burial began. A satirical funeral service was held and the coffins were carried in a mock procession to Parliament Building — acts that elicited the communal and bonding essence associated to 'African' funerals.37 Akin to aspects of Bakhtin's carnival, this provided new modes of interrelationship between individuals to occur as each coffin was collectively carried due to their size and weight.38 First-hand accounts from participants in *State Burial* suggest these artistic and performative additions embolden the public's participation as they create a carnival atmosphere and involve actions which entice people to come together in the street – effectively acting as a means of mobilisation.

Outside Parliament Building the coffins were piled together, doused with petrol and set ablaze. Just as in carnival, for a brief time, the rules of everyday life had been suspended. Boniface Mwangi says the reason for this act was because 'when you want to clear the field you burn it and then you plant, so this is what we are doing, we are burning it to start afresh with new leaders.' 39 Thus, the huge inferno can be interpreted as a celebration denoting the recurring democratic process of Parliament shutting before an election is held, with the prospect and desire for non-performing MPs to be replaced. Through artivism the protesters visually projected to those in office (the MPs), and indeed those vying for a position in office, that they (the electorate) hold the power to remove them.

The account projected by *State Burial* countered what was an otherwise impassive public sphere during the election period. A vast peace narrative enveloped public debate which fostered what some academics have termed as 'peaceocracy', because an overwhelming emphasis on peace and stability was to the detriment of the more critical

debates expected in a healthy democracy.40 Artivism's intentional use in *State Burial* was to generate a stunt worthy of the media's attention, thus acting as a means to reinvigorate the public sphere and generate critical debate. Having previously worked for media houses as a photographer Boniface Mwangi understood such dynamics, saying:

"As a photographer, I covered many protests and found them uninspiring. I thought the messages could be presented differently so that the protest gets attention from the media and citizens. I felt that protests ought to be designed to convey the message to as many people as possible with whatever means available. This should include means that shock them if possible, in order to dominate conversations of the day or season with the action and message of the protest."41

The realm of the media and the political are increasingly intertwined and as such Mwangi's emphasis on creating media stunts can become an important part in the realm of politics. In his research on theatricalised forms of protest, the academic Baz Kershaw has alluded to this saying: 'in its desire to capture the high points of the "news" the media may well play into the hands of the people creating the events. The media tend to pick out the performative precisely because the performative stages the dramas that the media consider to be the "news".'42 The media may not see a few hundred people protesting as being a significant enough story to cover; however, the sight of hundreds of coffins set ablaze outside Parliament certainly is. For the authors of artivism's use in protest the element of shock and surprise is paramount. In the case of *State Burial* very few people knew that the coffins would be set alight. It might have been assumed by the majority of the protesters that the coffins would be left outside Parliament Building in a similar manner to an earlier protest organised by PAWA 254, entitled *Love Protest*, which took place seven months before *State Burial*. Evidently, however, this would not have been in line with the flamboyant tactics of Mwangi who says: 'we're

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37 Mack, 2019
38 Bakhtin, 1984a: 123
39 Citizen TV, 2013

40 Lynch, Cheeseman & Willis, 2019
41 Mwangi, 2016: 294
42 Kershaw, 1997: 260

not here to soothe your emotions or soothe your ego, or make you feel comfortable. We want our work to make you feel uncomfortable, to do something.'[43] Whilst the purpose of such tactics are logical, what will become evident in this article is that at times media stunts produce a volatility of meaning which disrupt the protest's intended message. As a means to begin unravelling why this is so, but to also reveal further possibilities of animating protest through artivism, attention now turns to another demonstration organised by PAWA 254.

Vulgar aesthetics and strategies of debasement

On 14th May 2013, civil society organisations (including PAWA 254) coordinated the protest *Occupy Parliament* – objecting MPs' efforts to increase their £50,000 annual salary. For the everyday Kenyan, this move represented unfathomable greed in a country where average income is below £100 a month. Hundreds attended *Occupy Parliament* which culminated outside Parliament Building. The demonstration then entered a new phase, incorporating grotesque and vulgar aesthetics. Tens of live piglets (dressed in neck ties with the slogan 'MPigs' spray painted across their bellies), a bulky male pig, and a severed pig head took centre stage and litres and litres of rancid, rich, red blood, were emptied onto the street. Describing this approach one artist associated with PAWA 254 asserted: 'the best way to go out there hard is to come up with the most disgusting, the most horrible, shocking, and radical kind of stuff'.[44] According to Mwangi, the use of pigs was a means to communicate unequivocally the behaviour of MPs, saying 'we don't want you to start trying to get a meaning, we want to give you the meaning… pigs are greedy, these guys [MPs] are pigs, that's why we give you pigs'.[45]

There is a rich history of visual artists in Kenya, most notably cartoonists, using anthropomorphism in their work in order to denote the supposed characteristics of MPs. The popular cartoonist Gado has for many years denoted MPs as pigs, vultures, fat cats, hyenas and crocodiles. According to Gado, one of the reasons for this approach is that it enables one to attack the political elite, whilst not naming anyone in particular, thus not risking the possibility of becoming embroiled in a libel suit.[46] Similarly, in 2012 PAWA 254's initial foray into artivism saw four of Kenya's top graffiti artists depict MPs as vultures – an animal whose unpleasant character is manifest in a life of scavenging, opportunism, and preying on the frail – in a series of illegal murals in downtown Nairobi.[47] Occupy Parliament, therefore, can be seen as continuing this approach through employing strategies of debasement and reversal. In his writing on playful political protests, academic Florian Göttke describes such tactics as a means to 'establish a temporal alternative order, bestow[ing] carnival with inherently power-contesting traits'.[48] This is evident in Occupy Parliament through MPs being exposed for what protesters see them as — pigs who wallow self-absorbed in their own blood, piss and shit which they do in total disregard of the common citizen.

If the use of pigs during *Occupy Parliament* is interpreted as an attack on MPs, then this attack is also notable for its decision to partly reject the ambiguity made available in the acts of anthropomorphism discussed above. This is because unlike the piglets who were used as a representation of all MPs, painted across the hog's fat belly were the specific names of three MPs. These three MPs were perceived to be the most vocal supporters of the unconstitutional proposal to disband the Salaries and Remuneration Commission, in an effort to enable the salaries of MPs to be increased. One of those named was Aden Duale (the Majority Leader of the National Assembly) who on his grounds as a Muslim was totally enraged, saying: 'This is an insult and an affront to my religious liberty by associating me with an animal that my religion prohibits.'[49] The objection to the pigs, on religious grounds, likely concerned other members of the

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[43] Interview with Boniface Mwangi (14/08/2015)
[44] Interview with artist and activist Swift 9 (26/01/2018).
[45] Interview with Boniface Mwangi (14/08/2015).

[46] Gado, 2012: 131
[47] Ombati, 2015
[48] Göttke, 2015: 136
[49] Mosoku, 2013

Islam religion who constitute 10% of Kenya's population. During the initial planning of this stunt concerns were raised regarding the possibility of pigs causing offence to religious sensitivities. The use of pigs and blood, however, can be read as a tactic employed to create vulgar moments undermining authority, giving marginal subjects some kind of temporary power, through a suspension of ordinary rules and norms regarding what behaviour is acceptable. As one activist recalled: 'Our leaders understand the language of shame. So our artistic impressions have a connotation of shame and anger. Only then will politicians come to their sense and start realising their behaviour is wrong'.[50] The tactic of using grotesque aesthetics recalls suggestions in Bakhtin's theory of carnivalesque, that when a kind of symbolic degradation is performed it brings the elevated back down to earth and all that is high, low.[51] Such an approach begs asking whether certain strategies of artivism in protests risk alienating people rather than mobilising them to the cause they are fighting for, something which is now considered.

The confines of laughter and mockery

The social scientist Michael Billig writes of how outwardly mocking the rules and the rulers is a form of 'rebellious humour' that conveys moments of freedom from the restraints of social convention.[52] Bakhtin also suggested that laughter was positive, claiming 'seriousness burdens us with hopeless situations, but laughter lifts us above them and delivers us from them. Laughter does not encumber man, it liberates him… laughter only unites; it cannot divide'.[53] Although just as laughter, ridicule and humour can bring people together, it can also in the end divide.[54] It may even, as Billig asserts, 'help maintain the order that it appears to mock'.[55] In *Occupy Parliament*, the representation of MPs as greedy pigs was in some instances laughed at by the powerless at the expense of the powerful. However, when laughter is at the expense of the

powerless — even if the powerless is a non-human entity, which in the case of *Occupy Parliament* was a live pig and piglets— then it is unsurprising that some people found it distasteful. A case in point is that some of the artists who had been at PAWA 254 since its inception, discontinued their work with the organisation citing the extreme tactics of artivism and use of live animals as one of the contributing factors to their decision.

Through its use of artivism *Occupy Parliament* succeeded in creating a media worthy spectacle. The protest was reported on live across news stations in Kenya and received significant coverage from national and international media. *Occupy Parliament* was also enthusiastically spread and magnified by Kenyans on social networking sites.[56] Data collected from Twitter using a search of *Occupy Parliament*'s official hashtag reveals the protest was 'tweeted' about over 8,500 times.[57] However, many activists bemoaned the media sensationalising the bloody scene of frenzied pigs and their inaccurate reporting of the event. For example, online news reports in Kenya's *The Star* and *Standard*, falsely claimed 'at Parliament buildings, the protesters slaughtered a pig and three piglets',[58] and 'Bonnie Mwangi & Co slaughtered pigs outside Parliament on Tuesday morning as an analogy of MPs' greed'.[59] No pigs were slaughtered outside Parliament Building that day. As one activist explained: 'the severed pig head symbolised how MPs will feed off anything, even their own kind if it means they can fill their bellies, and the blood represented how the political elite are bleeding Kenyans dry.' [60]

An analysis of 29 online national and international news reports concerning *Occupy Parliament* divulges the extent to which this stunt garnered the media's attention. 72% of headlines

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[50] Interview with Erick Matsanza (19/10/2017)
[51] Robinson, 2011; O'Leary, 2015: 294
[52] Billig, 2005: 208
[53] Bakhtin, 1986: 134-5
[54] Berger, 1997: 57; Leftcourt, 2001: 72
[55] Billig, 2005: 200

[56] Mukhongo, 2014: Tully & Ekdale, 2014
[57] Data was collected from Twitter using the search tool, where an 'advance search' was conducted for all Tweets containing the *Occupy Parliament's* official hashtag. The search collected Tweets from a fixed period of 15 days – 7 days before the protest, the day of the protest, and 7 days after the protest.
[58] Wekesa & Were, 2013
[59] Mochama, 2013
[60] Interview with Erick Matsanza (19/10/2017).

mentioning 'pigs' or 'piglets' and of the articles which used imagery 83% exhibited pictures of the bloody pigs. In the main body of text 96% of articles mentioned the use of pigs and why the protest was taking place. Of notice, however, was that 65% of articles discussed in detail the protesters' concerns and reason for demonstrating. That said, approximately 25% of articles criticised (directly or indirectly) the protesters approach and those that did raised issue with the welfare of animals used in the protest.

The metaphor of a pig as an MP was easily understood by the public, however this was distorted through the use of live pigs. In a sense, the authors of this stunt lost control over the relationships between the symbolic and the real because they assumed a transparency that could not be sustained in the face of the contradictions produced by events. Unintended narratives regarding animal rights entered conversations that were planned to be about the greed of MPs. As a result, voices that were critical of the Government were at times deflected by shouts of animal abuse and as a consequence the protesters inadvertently came to be protested against. *Occupy Parliament* therefore raises a number of methodological considerations for artivism's use in carnivalesque protests. As highlighted by Kershaw in his study of dramatised popular protests, the performative always promotes an instability of meaning and as a result 'the significance of the event may thus more easily be turned against the authors'.[61]

A month after *Occupy Parliament* demonstrators rallied once again in order to show that their disapproval to MPs greed had not waned. The protest, dubbed *Occupy Parliament Reloaded*, was associated with PAWA 254, but this time no live animals were used. Instead a huge effigy of a pig was paraded to Parliament Building where it was theatrically destroyed. Fake bank notes containing imagery of pigs were hurled with small denominations of coins at Parliament in an act mocking how Kenyans are happy to give the greedy MPigs everything they have. In both

Occupy protests those taking to the streets never amounted to more than a few hundred, but their presence physically embodied the angst and anger of most Kenyans, whilst the media stunts visually projected to the nation, and indeed the world, the public's outcry. Perhaps an indication to the perceived effectiveness of bringing pigs to Parliament was its mimicking in neighbouring Uganda by the activist group Jobless Brotherhood. However, more so an indication to artivism's potential effectiveness is the fact that following both *Occupy* protests MPs succumbed to public pressure and rescinded their brazen demands for higher pay.

State violence and carnivalesque protests
One ugly element of protest is police violence and intimidation. For example, the authority's response to *Occupy Parliament* was particularly aggressive. The protesters were dispersed with tear gas and water cannon; they were intimidated with police dogs and police horse units; a number of protesters were beaten and arrested. As has been critiqued in carnival theory, after occasions of expressive dissent 'normal social order resumes – therefore reinforcing the dominant order by momentary act of juxtaposition'.[62] As a result of restricting civil liberties, the Jubilee Government, led by Uhuru Kenyatta, has been accused of taking Kenya back to the dark days of former President Moi.[63] At a protest in 2017, Boniface Mwangi was deliberately shot in the chest at close range with a tear gas canister by a policeman. The irony that the protest was against 'police killing protesters' (and at the time Mwangi was carrying an oversized model bullet with the words 'STOP KILLING US') seems to have been lost on the police. Such tactics, which aim to instil fear amongst those wishing to express dissent against the Government (an imposed form of State censorship), can, I argue, also be viewed as the postcolonial State's moment of violent carnival. In this moment of violent carnival anything goes, police impunity reigns, and vicious displays of the State's power over the citizen is asserted. However, activists also use and at times provoke the State's violent carnival in order to reveal not

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[61] Kershaw, 1997: 259

[62] Robinson, 2011
[63] Ghai, 2014

only the State's apparent anxiety over opposition and dissent, but also to expose the State's tendency to use violence as a means of exerting authority. A protest employing artivism, which took place on February 13th 2014 and entitled *#FEB13Protest*, illustrates these points.

caused controversy signing into law a draconian media bill then declaring afterwards that newspapers were 'only good for wrapping up meat'.[65] This activist went on to say: 'leaders had become reckless in their addresses, so we were like, "ok that's what you think as a leader, that's a kid's way of thinking." It is time we don't have kids

An activist standing in front of a pig effigy and emptying blood onto the streets during the 'Occupy Parliament Reloaded' protest: © Phil Hatcher-Moore

Planned months in advance, *#FEB13Protest* was a call to citizens to hold the Government accountable. One of the organisers remarked: 'we felt many issues which led to the 2007/8 post-election violence had not been resolved; we still had impunity, corruption, tribalism, and poverty, so the protest was to remind Kenyans that we hadn't really moved forward'.[64] *#FEB13Protest* was part of a larger campaign called *Diaper Mentality* which criticised what it claimed was 50 years of stunted growth as a nation (having gained independence from Britain in 1963). Speaking of this, one activist recalls how Uhuru Kenyatta

leading our nation.' However, just hours before the protest was due to start the Government banned it, accusing the organisers of trying to overthrow them through street protests, with alleged financial support from the United States Agency for International Development. Undeterred, the organisers persisted with their plan and were joined by hundreds of demonstrators. Carried by the protesters were huge baby effigies made of polystyrene and papier mâché, symbolising what they perceived to be Kenyans' immaturity. Also brought along, in a humorous and mocking fashion, were rolls of

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64 Interview with Kimani Nyoike (29/12/2017)

65 Interview with Erick Matsanza (19/10/2017)

toilet paper because, as one activist says, 'we wanted to tell our leaders to stop using diapers and start using toilet paper because when you become an adult this is what you do.'66

The demonstrators never made it to their planned meeting point. Instead they were met by police and anti-riot units who made arrests of four human rights activists whilst also launching a cascade of tear gas forcing the crowd to be dispersed. Speaking to *Voice of Africa* news, Reverend Timothy Njoya said 'we came here to make a statement on the state of the nation. To assess how much we've been able to accomplish, but it seems that the police have made the statement for us, and they've made it very loudly and clearly'.67 This response by the authorities perhaps calculatedly, on the part of the protesters, played into the *Diaper Mentality* narrative. As expected the protesters were unable to complete their demonstration but they were, nevertheless, able to generate a media stunt. Images of the police violently dispersing protesters and then kicking huge baby effigies across the street and rounding them up in the back of their vans spread through social media and news outlets. Additionally, rather than causing activists to lose morale or become consumed with fear, one protester claimed the actions by the State "re-energised people because suddenly the highest security organ in the country got to a point where they felt a mere protest could topple a government. So, we must have been doing something right."68 However, such optimism risks obscuring the State's own violent carnival. Having rebelled and laughed at authority through carnivalesque protest, the demonstrators became all the more aware of the State's power. Clearly, such scenarios reveal complexities regarding relations of power at play between the State and areas of civil society as they both use each other to make, breakdown and then remake narratives of domination, legitimacy and resistance.

Conclusion
This article has assessed the possibilities to

animate twenty-first century protests in Nairobi through artivism. The numerous methods discussed relate to Stephen Duncombe's concept of 'Æffect' – that is the possibilities of artivism generating some form of change, to move the material world and to have an effect; and the potential for artivism to generate affect by moving a person's heart, body, and soul.69 At the right time, in the right context and through appropriate tactics middle class activists in Nairobi are leading the way in using artivism as a creative means of public resistance which can be used in efforts to defend citizens' liberties and personal freedoms. Historically, popular protests in Nairobi have played a significant role in the winning of democratic rights and extending them. As a means of concluding this article it is necessary to reflect on artivism's use in Nairobi's so called third wave of protests and their bearing on democracy and development.

A striking feature of protests animated through artivism is their professionalisation, which relates to recent debates regarding the 'NGO-isation' of social movements.70 The protests discussed above, and indeed other protests associated with PAWA 254, make apparent this professionalisation as they draw support from international donors, elaborately brand their movement through printed T-shirts, banners and placards, are savvy in their use of social media, and pull off ostentatious stunts, which often require considerable resources to stage. Those participating in these protests express them as offering alternative avenues to participate in acts of dissent and civil disobedience; to catalyse unusual cognitive and emotional experiences of activism; to engender cohesion; and to animate protest through characteristics of carnival.

That said, and despite efforts at mobilising the masses on the ground, protests employing artivism in Nairobi cannot point to large numbers of participants or, as of yet, a significant social movement being built. In explaining this, the

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66 ibid
67 quoted in Joselow, 2014
68 Interview with Kimani Nyoike (29/12/2017).

69 Duncombe, 2016: 118
70 Choudry & Kapoor, 2013

'NGO-isation' of social movements employing artivism was one reason frequently cited by previous, and would be, participants of protests in Nairobi. The often vague and/or broad goals of protests, such as demonstrating against corruption and impunity, come across as abstract to the masses because they reflect the language of donors. When more narrowly defined goals and objectives are at the core of protests (such as those made during *Occupy Parliament*) a broader coalition of support across society is evident.

of narratives and discourse about the matters that shape their society.

Additionally, activists suggest that the spectacles created as a consequence of staging mock funerals, creating huge infernos, bringing laughter and vulgarity with pigs in Parliament, or exposing the State's violence with the help of baby effigies, catch the attention of international organisations and foreign governments. Having got their attention activists expect these influential bodies to pressurise the Kenyan Government into making

Baby effigies used during the '#Feb13Protest' are rounded up and put in the back of a police van: © Phil Hatcher-Moore

However, the dynamics of protest cannot be gained by counting numbers alone. It is evident protests organised by PAWA 254 are geared towards being media events that use aspects of artivism in order to gain maximum publicity. It was suggested by activists that using the media this way amplifies the protest, and indeed acts as a megaphone for those unable to participate. In doing so, and as a result of entering the public sphere through various domains, the protests are able to include a wider public in their generation

required changes in order to improve the nation's course of development. The extent to which popular protests deploying artivism might contribute to making this happen, however, requires further research. Nevertheless, what this article has made apparent is that the real value of artivism may well exceed its potential in animating street protests and creating new terrains for political engagement. That is because artivism excites political imaginations and consciousness, making possible new visions for a more radical politics and better world to emerge.

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Is Civil Society Self-Regulation Effective? The case of Roman Third-Sector and the "Mafia Capitale" Scandal

Domenico Carolei

Article Information

Abstract

The purpose of this article is to measure the effectiveness of an exemplary civil society self-regulation against its own objectives, and to map out reasons behind non-compliance. It focuses on a checklist of indicators (CDV) developed by Italian Civil Society Organizations (CSOs) in the aftermath of the "Mafia Capitale" scandal when threatened by strict government regulation and by critical public opinion. Methodologically, this test of effectiveness is performed employing the blueprint designed by the One World Trust. To preview the outcome of this test of effectiveness, it will be concluded that self-regulation has been effective primarily in protecting the sector's autonomy against hypothetical legislative interferences. Even if quantitative findings indicate a medium compliance rate, qualitative findings suggest that there can be many reasons behind non-compliance which sometimes do not depend entirely on CSO's commitment to comply with voluntary standards. In this context, a distinction between objective and subjective reasons of non-compliance is drawn.

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Introduction and Research Aims

There have been calls for a greater accountability of civil society organisations (CSOs), due to their rapid growth in terms of size, visibility and political influence, coupled with a series of high-profile scandals (Edwards, 2000). One of the ways to deal with accountability is self-regulation: voluntary norms (e.g. codes of conduct, accreditation schemes, peer-assessment etc.) defined by CSOs for CSOs at sectoral level to regulate their behavior (Gunningham & Rees, 1997). Over the past decades, there has been a proliferation of self-regulatory instruments worldwide (Warren & Lloyd, 2009). Self-Regulation is currently evolving and emerging in several contexts both at a national and international level. At the international level, the Core Humanitarian Standard on Quality and Accountability (2014) has merged the Humanitarian Accountability Partnership International with People in Aid, integrating also The Sphere Project (The Sphere Project, 2014). In December 2017, the Global Standard for CSO Accountability was launched which has the ambition of serving as a point of orientation to improve accountability of CSOs working in the global south and north (Accountable Now, 2017). In November 2018, British charities developed the first ever Charity Digital Code of Practice (Charity Digital Code of Practice, 2018) whereas, in January 2019, the National Council for Voluntary Organisations (England and Wales) released the Ethical Principles for the Charity Sector (NCVO, 2019; Carolei, 2019).

The importance of self-regulation emerges from numerous factors, the most important being its purpose of institutionalising best accountability practices and rendering them systematic among CSOs. In that respect, self-regulation is more than a simple tool of accountability, it is a process linked to civil society identity and normative views on organisational behavior (Ebrahim, 2003). But, self-regulation is also used to avoid restrictive state policies, especially when CSOs operate in hostile political environments (Bies, 2010). Similarly, self-regulation can occur when the State structure is collapsed and CSOs are operating in a 'vacuum of regulation' (Harris-Curtis, 2009). So, self-regulation, as a normative institution of (and

for) civil society, reflects the nature of CSOs as civil agency in terms of self-determination, hence democracy, in setting regulatory norms for themselves at grassroots level, and in terms of normative developments as civil society autonomy in devising forms of progressive change within the law. Consequently, that the subject of self-regulation is central to discourses of democracy and development as well as to academic discourse about the nature and role of civil society.

Despite the increasing popularity, a sizable portion of self-regulatory instruments have been criticised due to systematic monitoring and sanctioning disfunctions (Hammad & Morton, 2011). The spectre of non-compliance cast doubts not only on self-regulation as a means of accountability, but it does also increase scepticism on self-regulation effectiveness.

Researchers have developed two approaches under which the matter of effectiveness can be assessed: the economic approach (also known as 'club theory') and the institutional approach (also known as 'constructivist approach'). On the one hand, the economic approach suggests that self-regulation arises as a response to mitigate perception of opportunism within the sector and CSOs create and/or join 'voluntary clubs' to send a reputational signal of quality to the principal(s): donors, lawmaker, and other targeting stakeholders (Gugerty & Prakash, 2012). In terms of institutional architecture, two conditions typify credible self-regulatory initiatives: clear standards of behavior and stringent enforcement mechanisms (Prakash & Gugerty, 2010). Under this approach, a self-regulation is effective if a high number of CSOs comply with voluntary standards (which are, in turns, adequately enforced) and, simultaneously, a successful signalling is sent to the initiative's principal/targeting stakeholder, resulting either into an increase of public trust/funding for CSOs or into a decline of intrusive State regulation (Gugerty & Prakash, 2012).

On the other hand, the institutional approach sees CSOs as normative institutions that collaborate to define self-regulatory standards with the aim of setting principles and practices that define the "right conduct" and such a process spells out the

sector's public commitment to moral restraint and aspiration (Gunningham & Rees, 1997; Feeney, 1997). According to the institutional theory, a self-regulatory instrument is effective when it creates an institutional setting that promotes social learning and norm-compliant behaviour, encouraging CSOs to internalise behavioural norms (Crack, 2018).

So far, these approaches have been applied by scholars to analyse whether self-regulation is effective in relation to various empirical and theoretical tasks. First, there is a body of the literature that has employed the economic and the institutional approach to explore drivers and motivations behind the emergence of different self-regulation models in Europe (Bies, 2010), Asia (Sidel, 2010), Africa (Gugerty, 2008) and across the three continents (Gugerty et al, 2010). Comparative scholars have lately studied the interplay between State-based regulation and self-regulation (or co-regulation) looking at different jurisdictions (Breen et al, 2017). Drawing upon the economic approach, scholars have laid down an analytical framework to identify the ideal institutional architecture — in terms of monitoring and sanctioning — that typifies credible voluntary clubs (Prakash & Gugerty, 2010). Using the economic and the institutional approach as a theoretical outline, a recent study has investigated the perception of effectiveness of the INGO Accountability Charter exploring the motivations of NGOs in joining the Charter and to what extent participant NGOs perceive it as effective in enacting accountability (Crack, 2018). Similarly, a scholar has gathered perceptions of self-regulation effectiveness looking at USA-based instruments asking why CSOs adhere to voluntary regulation and whether the subsequent regulatory experience matches their initial expectations (Kennedy, 2018). The institutional approach was deemed more appropriate than the economic one in explaining how International Non-Governmental Organisations (NGOs) defined and institutionalised voluntary standards of accountability within the context of the Humanitarian Accountability Partnership (Deloffre, 2016). The same approach was also employed to prove that self-regulation arises as a response to environmental and institutional pressures (Bromely & Orachard, 2016).

As to norm-compliance, researchers have put much of their intellectual efforts in understanding what factors account for the variation in the strength of monitoring and sanctioning mechanisms (Boire, Prakash & Gugerty, 2016), while, other scholars have measured to extent to which NGOs comply with regulatory standards focusing on the Global Reporting Initiative: findings point out low level of norm-compliance (Traxle, Greiling & Hebesberger, 2018). On a theoretical level, it was argued that non-compliance might result from willful/strategic shirking and from mere confusion or ignorance (Prakash & Gugerty, 2010). However, there is scant empirical research that investigates the reasons behind non-compliance. Recognising this gap, Crack has investigated the challenges faced by CSOs in complying with self-regulatory standards gathering data in the field. In that respect, Crack argues that 'there has been an overwhelming proliferation of initiatives, that observance of the standards can be excessively bureaucratic, the initiatives may not adequately accommodate the organizational diversity in the sector, and the extent to which the standards are sufficient to embed a culture of accountability to affected populations is doubtful' (2016: 41-42). However, Crack's investigation is limited to a few self-regulatory instruments of which only international NGOs can be part.

In light of this, the list of the challenges faced by CSOs in complying with self-regulation cannot be considered exhaustive, neither can it be said that the effectiveness of self-regulation has been adequately investigated especially in terms of verifying whether self-regulatory instruments meet their expected outcomes/objectives. Despite their tremendous contribution to the literature, none of above-mentioned studies has tried to examine the matter of effectiveness against self-regulation's own objectives/expected outcomes. Indeed, prominent scholars have warned that 'future efforts should begin to assess the effectiveness of self-regulatory systems in achieving their desired outcomes and improving nonprofit performance' (Gugerty et al, 2010:10).

To sum up, there is still a question within the literature that remains largely unanswered: is self-regulation effective in achieving its own objectives? When assessing the effectiveness of self-regulation, one must ask not only whether — and to what extent — CSOs comply with voluntary standards but also why they fail to do so. This article aims to provide an answer to these questions.

2: Rationale for the Case-Study and Methodological Framework

To answer to the research questions formulated above, this research has looked into the practices of Italian CSOs. Italy has been chosen as a case study for three reasons. First, the "Mafia Capitale" scandal (December 2014) has undermined the credibility of CSOs revealing a network of corrupted relationships between CSOs, criminal gangs and political parties.

Secondly, the Italian government has recently reformed the third sector through the 'Riforma del Terzo settore, dell'impresa sociale e per la disciplina del Servizio civile universale' (Third Sector Reform 2014-2017). Thirdly, a new wave of self-regulatory initiatives is currently emerging to restore the credibility of the third-sector, thus providing an invaluable opportunity to analyse the genesis of self-regulation. In particular, this research has looked at *La Carta dei Valori* ('CDV') developed by *Forum Terzo Settore Lazio* ('FTS'). As better documented in section 3 of this article, The CDV is a checklist of indicators with a focus on digital transparency requiring CSOs to disclose a series of information on their webpages.

Methodologically, the test of effectiveness on the CDV was performed employing the blueprint of the One World Trust (London) (Obrecht, 2012). This blueprint has been employed in this research because it indicates precisely how to measure the effectiveness of civil society self-regulation in the light of its own objective(s). The alternative would have been to opt selectively for either the economic or institutional approach. In that respect, the blueprint provides a multidimensional account to assess self-regulation effectiveness accommodating both the economic and the institutional approach. Within this blueprint, self-regulation effectiveness is conceptualised as

follows: a) successful signalling (change in the perception of initiative's targeting stakeholder); b) authenticity (CSOs comply with standards set by self-regulation); c) improved quality (changes in the CSO, its relationships, or its programmatic effectiveness, outside of the standards set by self-regulation). Based on the drivers motivating the adoption of a given self-regulatory instrument, researchers can choose which one, among the three conceptualisations of effectiveness, would fit more their investigation. Additionally, the blueprint indicates that there are two factors that influence the effectiveness of self-regulation: a) the robustness of the regulatory architecture that oversees norm-compliance; b) the operational context (in terms of political restrictiveness of civil society freedoms) in which the instrument is adopted.

The test of effectiveness on the CDV has been performed into two complementary steps. In Step I, the analysis was focused on regulatory body, drivers and regulatory structure of the CDV (Figure 1). First, the investigation has looked into the regulatory body (FTS) that developed the CDV (*Who made it?*). Despite the blueprint does not contemplate this sub-step, it is important to ascertain whether the regulatory agent has structural capacities to enact self-regulatory norms within the sector. Subsequently, this study has identified the motivational drivers which have influenced the adoption of CDV (*Why was it adopted?*). This sub-step is vitally important to determine the CDV's expected benefits and to guide the definition of effectiveness towards one or more understandings of the concept. After that, it was critically assessed the CDV's regulatory structure (*How does it work?*). As to the operational context, it was taken from granted that Italy has no political restrictions on civil society as it stands from the Freedom House measurement of political and civil freedoms (Freedom House, 2018). It is for this reason that self-regulation is likely to take place in any sort of model or form.[i]

In Step II, the effectiveness of the CDV was measured focusing on expected benefits (shaped based on drives as emerging in Step I) and expected outcomes (how benefits are achieved) using appropriate and measurable indicators to

verify behavioural changes in terms of successful signalling, authenticity and improved quality (Figure 2). For this investigation, improved quality – which is a broad category supported by flexible indicators within the One World Trust blueprint– was narrowly understood as mere conformance with the CDV's standards, overlapping with the conception of effectiveness as authenticity. The rationale behind this choice is that CDV was adopted primarily to send a positive signalling to public opinion and to the legislator. Consequently, conceptualising and measuring effectiveness as a successful signalling was of primary importance. Basically, it is the self-regulatory instrument itself, through its drivers, that guides the researcher towards the adoption of a specific understanding of effectiveness, excluding the other conceptions available. In addition to this, this study has extensively dealt with the concept of effectiveness as authenticity, exploring not only whether — and to what extent — CSOs comply with self-regulatory standards, but also why CSOs fail to do so.

2.1: Data Gathering and Analysis
Considering the numerous questions addressed both in Step I and Step II, a wide range of empirical data have been gathered and analysed. All the data was gathered during extensive fieldwork that took place in Rome between April and September 2017.

Qualitative Interviews with Network's Representatives
In order to develop an in-depth understanding of both the genesis and the way the CDV works, and due to the lack of documentary sources on the drafting process and on the sanctioning and monitoring system of the CDV, a semi-structured interview was conducted with the former spokesman of FTS Lazio, Mr. Gianni Palumbo together with an informal recorded chat with Professor Antonietta Cosentino (University of 'La Sapienza' Rome), who was member of the Panel of Experts (*Comitato Scientifico*) that drafted the CDV.

Quantitative Data: The Edelman Trust Barometer, EURISPES Report and Data on Donations
In terms of successful signalling, the main aim of the CDV was to increase public trust in civil society

targeting public opinion in general, rather than a specific stakeholder.[ii] Public trust was measured through two indicators: a) public opinion's perception of civil society and b) rate of donation (whether it is increased or decreased). The Edelman Trust Barometer (2016) together with the 2016 Annual Report on Italy released by The Institute for Political, Social and Economic Studies (EURISPES) has been acquired to assess public trust in civil society. As to the rate of donation, the latter was measured relying on the Annual Report (2017) of the Italian Institute for Donations (*Istituto Italiano Donazione*).

Legal Ananlysis of Third-Sector Reform
The second aim of the CDV was to send a successful signalling to the legislator, who had been drafting the Third-Sector Reform for almost three years (2014-2017) with the "Mafia Capitale" scandal occurring in the middle of the drafting process in December 2015. An assessment of the final text of the Third-Sector Reform was necessary to evaluate whether CDV has been effective in sending a positive signalling to the Italian Government in declining a strict State regulation for CSOs. In order to evaluate the strictness of national regulation of CSOs, scholars have designed an index that takes into account the three factors: 1) barriers to entry; 2) the ability to engage in advocacy and political activity; 3) the scope of economic activity (Bloodgood et. al., 2014). Other scholars have also considered an additional factor to the ones mentioned above, that is, the level of State supervision over CSOs (Sidel & Moore, 2006). The higher the bar is within these key four factors, the stricter the regulatory environment is for CSOs. Based on this, a strict government regulation consists, either jointly or separately, in an intrusive legislative inference with the right to freely form and run a CSO, in policy measures imposing conditionalities on CSOs to engage in legitimate advocacy and/or economic activities, tax policies aimed at deterring donors from supporting CSOs, and limiting the supervision functions over CSOs only to governmental bodies. To understand whether the Italian Third-Sector Reform represents a strict legislation for CSOs, focus has been brought on new norms that deal with registration, transparency and reporting duties as well as on

those rules that define the subjects called to exercise monitoring functions both at a sectoral and at an organisational level. To do so, a legal analysis between abolished and new norms was performed focusing on nature, content and aim of these core rules.

Compliance Rate: CSO Websites Quantitative Analysis

As to authenticity and improved quality, the effectiveness of a self-regulatory instrument depends on its compliance rate, which is determined by the extent to which CSOs comply with set standards. The CDV asks CSOs to publish a series of information online. 25 websites out of 27 CSOs belonging to the FTS Lazio were scrutinised using the relevant checklist of indicators to calculate the overall compliance rate. Two CSOs were excluded from the investigation as the first one recently joined the network, whereas, the second one did not have a webpage. If the item was disclosed online, the relevant box on the checklist was ticked with a "Y". Otherwise, the box was marked with an "N". On the one hand, the compliance rate for each CSO is given by the sum of the items that appears online [those marked with a "Y"] which is then divided by total number of items that should appear online [24] multiplied by 100. On the other hand, the compliance rate for each indicator is given by the sum of the same items disclosed online ["Y"] on various websites divided by the total number of CSOs [25] multiplied by 100. Webpages were scrutinised in April 2017 and then again in September/October 2017. No substantive change was reported during the first and the second scrutiny. Names of CSOs were withheld, and they have been assigned a random number from 1 to 25.

Non-compliance and Sanctioning System: Qualitative Questionnaires and gathering Data in CSOs Network

The analysis on authenticity would incomplete without knowing the reasons faced by CSOs in disclosing information online and without knowing if (and how many) CSOs have been subjected to sanctions for non-compliance. Due to the lack of documentary sources on the sanctioning system of the CDV, Mr. Palumbo (former spokesmen of FTS Lazio) was asked a few interview questions on the matter. In order to

map out the reasons behind the non-compliance, a series of qualitative questionnaires have been distributed among delegates during three network meetings organised between April and June 2017. The questionnaire was anonymised and was composed of two simple questions aimed at providing rich qualitative information on 'which indicators were the most difficult to comply with', and 'why' this would be the case. In total, eight questionnaires were filled by delegates who attended the three meetings. In that respect, it is important to note that the attendance rate was very low. The number of delegates for each meeting was between three and seven, each of them representing one organisation, despite the network being composed by 27 CSOs in total. The reason behind such a low participation was due to the fact that FTS Lazio was in a transitional phase: a new spokesman was recently appointed at beginning of April 2017 and new board members were appointed at the beginning July 2017.

According to my informants within FTS Lazio, the network was profoundly divided on the nomination of board members (including the spokesman) and such division resulted in an internal fragmentation. Consequently, a special sampling strategy was adopted to ensure that all sides of the network were represented: two representatives of CSOs, who were not attending meetings, were deliberately sought and interviewed individually (Morse, 1991). This was done in order to ensure that the analysis would not be distorted towards one perspective: that of the more active and sympathetic CSOs who were attending all meetings and filled in questionnaires. The total sample comprises of eight questionnaires (cited with the letters A to H) and two interviews (cited with the letters I-J) representing 37% of FTS Lazio membership. As to data analysis, evidence emerging both from questionnaires and interviews was organised and grouped based on the two question categories: a) 'what' indicators were the most difficult to comply with and b) 'why' this would be the case. During this analytical stage, emerging evidence was read, considering notes and other materials gathered during FTS meetings when the questionnaires were filled. Themes and sub-themes were subsequently developed in light of the findings

emerging from the CSO websites quantitative content analysis (considering both the compliance rate per organization and per requirement) and from the interviews conducted with Mr. Palumbo and Prof. Cosentino.

2.2.: Article Structure and Preview of the Findings

Because the test of effectiveness is performed into two successive steps, this paper is structured accordingly. Section 3 focuses on drivers, regulatory body and structure of the CDV (Step I). In section 4, the test of effectiveness (Step II) on the CDV takes place, measuring the expected benefits (shaped based on the drives as emerging in Step I) and expected outcomes (how benefits are achieved) to verify behavioural changes in terms of successful signalling, authenticity and improved quality.

To preview the outcome of this test of effectiveness in terms of successful signalling, it will be concluded that the CDV has been effective in protecting the sector's autonomy against hypothetical legislative interferences. At the same time, it could not be determined whether the CDV has been effective in increasing public trust, as public trust depends on many factors that are independent from the development of a self-regulatory instrument. As to authenticity and improved quality, it will be submitted that even if quantitative findings indicate a medium/low compliance rate, qualitative findings suggest that there can be many reasons behind non-compliance that sometimes do not depend entirely on a CSO's commitment to comply with voluntary standards. In this context, a distinction between objective and subjective reasons of non-compliance is drawn. Finally, the conclusive section outlines the paper's contribution to academic and societal discourse on self-regulation, an agenda for future research and research limitations.

3: Step I: Regulatory Body, Drivers and Structure of the CDV

3.1.: *Who made it?*

FTS Lazio is a regional network of CSOs belonging to the biggest Italian umbrella organisation (*Il Forum Nazionale del Terzo Settore*) which represents 81 national CSOs operating across the Italian territory (*Forum Terzo Settore, Chi Siamo*). Founded in 1997, FTS is the oldest civil society network established in Italy. FTS Lazio is a pluralist network which brings together different kinds of CSOs in terms of size, nature, mission and actives. This diversity often results into polar types of CSOs (e.g. ecclesiastical and secular associations; national and international CSOs). In 1998, FTS obtained the observer status in several State institutions and it has been consulted by the Italian legislator to draft and negotiate third-sector policies. In light its characteristics, FTS Lazio can certainly be considered a network with structural capacities to define self-regulatory norms.

3.2.: *Why was it adopted?*

There are typically three drivers to self-regulation: low stakeholders trust, restrictive State regulation and need for capacity building and learning (Obrecht, 2012). In this specific instance, the scandal "Mafia Capitale" triggers widespread skepticism in CSOs and the need for capacity learning as confirmed by Mr. Palumbo:

"The CDV was primarily developed to safeguard the reputation of the third-sector which was damaged by the 'Mafia Capitale' scandal... the credibility of the third sector was drastically undermined even if allegations of corruption concerned few CSOs compared to the majority that operate transparently and legally. Usually it takes up to several years to build a solid reputation but few seconds can be sufficient to ruin it: one bad apple spoils the whole barrel."

Therefore, a detailed account of the facts characterising the scandal "Mafia Capitale" is indispensable. In December 2014, the Attorney General of Rome issued an arrest warrant against 44 people (Tribunale Roma, Ufficio VI GIP). According to the police, a criminal network of politicians, criminals and CSO's managers took advantage of recent influx of immigrants through its political connections within the City Council of Rome, securing lucrative public contracts to manage several migrant's centers of the Italian capital city. In an intercepted phone call released by investigators, the head of a social enterprise was quoted saying: 'Do you have any idea how

much I make on these immigrants? (…) drug trafficking is less profitable! We closed this year with turnover of 40 million but our profits all came from the gypsies, on the housing emergency and on the immigrants!' (Noack — *The Washington Post*, 2014).

Public trust is obviously a key component for the third-sector and when it is compromised by public scandals, this leads to two consequences: tighter government regulation and low stakeholder trust, especially donor scepticism (Obrecht, 2012).

Indeed, the scandal 'Mafia Capitale' pushed the Italian Government to address the issue of accountability of CSOs through the Third-Sector Reform (August 2017) which was already a key point of the government's agenda before the scandal. Before the scandal, the main aim of the Reform was to implement coherent legal policies among Italian CSOs, because the legislation was profoundly outdated and fragmented into several acts (Vaccario, & Barbetta, 2017). After the scandal, issues of accountability and supervision over the sector could no longer be ignored by the legislator and therefore were incorporated into the reforming agenda. The second driver that led to the adoption of the CDV was the Third-Sector Reform that – while was being drafted – was characterised by numerous uncertainties regarding the way in which the Government intended to address issues of accountability, transparency and supervision of the third-sector.

3.3.: *How does it work?*
Immediately after the scandal, the Spokesman of FTS Lazio appointed a Panel of Experts (*Comitato Scientifico*), composed by academics and well-established practitioners, so that they could find the most appropriate solution to address the widespread lack of trust in the sector. The Panel of Experts opted for a code of conduct, focused on digital transparency, namely the CDV. This was subsequently approved by the General Assembly of the network on the 15th of July 2015. Considering that the main driver behind the genesis of the CDV was to send a successful signalling to public opinion, this self-regulatory instrument frames accountability primarily as a matter of transparency, demanding CSOs to disclose a series of items on their websites.

In terms of normative content, the CDV is structurally divided into two parts. Part I affirms a set of principles (such as non-discrimination, participation, transparency, fair-competition), whereas, Part II consists of a checklist which requires CSOs to disclose various items on their websites such as financial budget, meetings with stakeholders, performance reports and board directors' CVs. The CDV states that the checklist represents a "minimum standard", as the items are normally available to all CSOs. As to its scope, the CDV targets all 27 CSOs belonging to FTS Lazio: if a CSO is part of the network, then it is expected to comply with it.

Concerning the nature of the CDV, the latter is formally a checklist of indicators. This could wrongly imply that this self-regulatory instrument is merely a self-assessment tool and there is no monitoring system set to verify norm-compliance. Instead, an independent committee (*Commissione di Garanzia*) within FTS Lazio was empowered to verify *motu proprio* whether CSOs comply with the checklist conducting periodical assessments (at least once every two years) of their websites.

Aside from this monitoring mechanism, the CDV is equipped with a sanctioning system. In the case of non-compliance, the committee invites CSOs to redress their omission within 30 days. Otherwise, the following disciplinary measures may be taken: a) recall, b) disapproval, c) suspension, or d) expulsion. These measures are governed by the principle of progressive sanctions, according to which an organisation must be properly warned, through recall or disapproval, prior to being suspended or expelled by the network. With regard to expulsion, the committee has to submit a motivated proposal to the Board of Directors of FTS Lazio. The expulsion can be appealed to the General Assembly of FTS that decides on the basis of an inquiry formulated by Board of Directors.

As to the drawing-up process of the CDV, Prof. Cosentino explained that each group of items (Part II) corresponds to a principle stated in Part I. Essentially, the checklist of indicators operationalises the principles. She also made clear that the items contemplated in the checklist come in pairs, and consequently they are not on their own. On a practical level, this implies that the

items can be crosschecked: basically, if an item appears online (e.g. in a financial budget), then a subsequent item should appear as well (e.g. source of funding). During her interview, Prof. Cosentino clarified that a useful source of inspiration in drafting the checklist of indicators was the first-ever performance report published online by Italian business companies. As it will be shown later in this paper (section 4.4.4), there is a deliberate effort of the Panel of Experts to change the institutional culture of CSOs by bringing an accountability paradigm that did not develop fundamentally from CSOs' activities. Prof. Cosentino also stressed that the checklist of indicators was then adapted to the third-sector dimension and its requirements were made sufficiently generic in order to be applicable to all the different CSOs, in light of the diversity of the network. However, research findings (section 4.4.1) will demonstrate that a few voluntary requirements contemplated in the checklist fail to accommodate organisational diversity.

4: Step II — Testing the Effectiveness of the CDV

4.1: *Successful Signalling: Increasing Trust in Civil Society?*

According to EURISPES Report (Table 1), public trust in voluntary associations (*associazioni di volontariato*) declined to the lowest point since 2010, the year in which it had reached its peak (82%), prior to increasing again in the following year (2015). Despite the negative trend in 2014 due to the scandal, it is important to highlight that voluntary associations remained the most trusted entity compared to other actors over nine years (2007-2016). Similarly, the Edelman Barometer (Table 2) shows that the perception of trust in NGOs among the informed public fell dramatically between 2012 and 2014, losing more than ten percentage points (from 74% to 62%) and then began to rise in the following years (2015-2016) gaining those ten percentage points lost previously (from 62% to 71%). Just as the EURISPES Report, the Edelman Barometer confirms that, despite public trust in CSOs was very low in 2014, civil society was still the most trusted actor compared to public institutions, media and business sector.

According to data of the Italian Institute of Donation (Table 3), the rate of donation remained stable (23%) for four consecutive years (2011-2014) and then it dropped down in 2015 after the scandal (21%) until it reached its lowest level ever in 2017 (19%). The chart reports a constant negative trend indicating that Italian third-sector lost more than six million of donors in 12 years.

Overall, trust in civil society did increase a little after the CDV was adopted, whereas the rate of donation is dramatically dropping year on year. Consequently, if one tries to understand whether the CDV has succeeded in restoring public trust in CSOs based on the above data, the answer would not be entirely positive.

Realistically, it takes many years to build up a good sectoral reputation and only one bad move can be enough to lose it (Marschall, 2014). Public trust in civil society is influenced by many factors which are independent from the development of self-regulatory instruments such as good organisational performance or the integrity of CSOs' leaders. Similarly, there are many reasons why the Italian third sector lost six million donors in the last twelve years, the most important of which was the economic recession that affected many Italian families.

Another important factor is dictated by the limits of the current accountability agenda that relies primarily on information-based regulation. For instance, previous research has found that charity ratings did not considerably influence donations (Szper & Prakash, 2011) and that positive ratings have a slight positive effect on donations, but bad ratings have no effect at all (Sloan, 2009). Other researchers have shown that most donors do not rely on charity watchdog rating (Cnaan et al, 2011), while earlier studies have documented that even if there is a correlation between the adherence to self-regulation initiatives and increased donations, this correlation is dependent on pre-existing levels of public trust (Bekkers, 2003). Consequently, donations tended to increase when CSOs had high a degree of trust prior to the development (or adherence) to self-regulatory standards (Bekkers, 2003).

It is for these reasons that a scholar went as far as claiming that 'although transparency has an

important place in a world rapidly moving toward expectations of open data, it alone does not appear to produce significant changes in behavior in (…) donors' (Phillips, 2012: 812). A recent study has also demonstrated that a good portion of existing accountability frameworks are built upon the model of rational trust, according to which CSOs supply information and develop transparency policies to allow donors to rationally assess whether CSOs will keep their accountability commitments, which will affect their decision to donate resources (Keating & Thrandardottir, 2017). However, this model of rational trust explains partially why donors trust CSOs, and therefore social models of trust should be taken into account too (Keating & Thrandardottir, 2017). In a nutshell, social models of trust suggest that where there are common social attributes (such as shared values, or a solidarity feeling of working towards common goals) between donors and CSOs, donors will trust CSOs with far less information than might be otherwise expected (Keating & Thrandardottir, 2017). This in turn explains why CSOs have been consistently seen as highly trustworthy despite a historical lack of full transparency that the current accountability agenda is meant to deliver (Keating & Thrandardottir, 2017). In light of the above reasons, it would be reasonable to claim that the success or failure in restoring public trust cannot be solely attributed to the CDV.

4.2.: *Successful Signalling: is the 2017 Third-Sector Reform a strict regulation?*

In July 2014, the Council of Italian Ministers approved a bill aimed at reforming the third sector. The main purpose of the Reform was to modernise a fragmented and outdated legal framework. In June 2016, the Italian Parliament issued Law n. 106/2016 delegating to the Government legislative functions to finalise the Third-Sector Reform. In August 2017, the Third-Sector Code finally came into force.

The law-making process lasted for almost three years and it involved contributions from political parties, trade unions, universities, practitioners and CSO networks (including FTS). According to official figures released by the Government, 1,016 subjects were consulted (Ministero delle Politiche Sociali e del Lavoro). Since the beginning of the

drafting process, FTS considered the Reform as a positive step towards the modernisation of the sector (Pavolini, 2014). The Reform contributed to the harmonisation of the Italian third-sector through three key passages. Firstly, it provides a code – one single body of law – that, through its 114 Articles, abolishes the previous overlapping legislations located into different legislative acts. In doing so, the code identifies common characteristics among CSOs and it provides an exhaustive list of activities of public interest (e.g. health care, human rights, social assistance, scientific research, international cooperation and development) locating the entities carrying out such activities between the market and the State. Secondly, the new legislation aggregates various legal definitions of CSOs (e.g. foundations, voluntary associations, social enterprises, philanthropic entities, civic association etc.) under a common umbrella definition: third-sector organisation. Thirdly, it introduces a National Registry of Third Sector, abolishing the regional registries, that is managed by the Ministry of Welfare and Labour. Only those entities complying with the requirements set by the code can be listed into the National Registry and will be consequently entitled to receive tax exemption.

In order to fully understand whether the code represents a strict legislation for CSOs, new transparency and reporting duties were focused upon as well as on subjects called to exercise monitoring functions both at a sectoral and organisational level. As already pointed out in Section 2, a legal analysis between abolished and new norms was conducted focusing on nature, content and aim of core rules. This is succinctly summarised in Figure 3.

As to financial and transparency duties, the Reform extended the duty to the drawn-up annual financial budget to all CSOs with an income above 220,000 Euros (Article 13, 1), establishing a system of financial reporting to the National Registry (Article 13, 7). Instead, those CSOs carrying out predominately business activities to achieve charitable purposes have to report their financial performance to the Chamber of Commerce (Registry of Business Entities). Prior to the Reform, the obligation to the drawn-up financial budget was fulfilled only by some organisations (e.g.

International-NGOs) depending on their legal status and regardless of their income. It should be noted, however, that CSOs still do not have an obligation to publish their financial budget online under the new legislation. Despite this, all CSOs with an income above 100,000 Euros are required to publish the annual salary of board members, managers and employees on their websites (Article 14, 2). Prior to the Reform, there was no such duty.

With regard to performance reporting, CSOs with an income above a one million Euros are obligated to publish an annual performance report called 'Social Budget' (*Bilancio Sociale*), under Article 14, 1. The latter is a descriptive document, originally developed in the area of corporate social responsibility, through which both profit and non-profit entities highlight results achieved (in light of their primary aims and mission) as well as the benefits they produced for each stakeholder, paying particular attention to social and environmental challenges. The publication of this report usually relies on the voluntary commitment of an entity. Under the abolished legislation, there was no reference to Social Budget.

As to the monitoring bodies, the Reform conferred on three agencies supervisory functions, each of which is required to oversee the fulfilment of legal requirements on different levels: a) an inspection/monitoring body (*Organo di Controllo*); b) the Ministry of Welfare and Labour Policies; and c) national networks of CSOs.

At an organisational level, the new law requires CSOs to form an internal inspection/monitoring body (*Organo di Controllo*) that oversees compliance with organisational, legal and financial norms and, simultaneously, assesses whether the organisation is managed efficiently in light of its mission and charitable aims (Article 30, 6). This body can also conduct internal inspections (Article 30, 8). The establishment of this new body is mandatory for those CSOs who have more than five employees and with income above 220,000 Euros for two consecutive tax years. Under the abolished law, CSOs were asked to set up a monitoring body within their own structures only if their income was above 1,032,913.80 Euros for two consecutive tax years. The same duty was

also in place for bank and lyric foundations regardless of their income.

At a sectoral level, the Ministry of Welfare and Labour Policies is now empowered to monitor CSOs registered within the National Registry (Article 92). Initially, the Italian legislator was planning to establish an *ad hoc* independent authority — like the Charity Commission in England and Wales — to exercise supervisory functions over the sector, but such a proposal was subsequently abandoned due to the lack of public funding (Brusini, 2013). The establishment of this authority was deemed too expensive. Practitioners and representative entities of the sector (including FTS) were considering the establishment of an independent authority as a positive legislative proposal. Basically, the argument in favour of such proposal was that an independent authority would have been more institutionally appropriate and better equipped than a governmental body in exercising supervisory functions over the sector. In the end, attributing supervisory powers to the Ministry of Welfare and Labour Policies did not cause any negative reaction from CSOs, because this political agency was exercising supervisory functions on CSOs before the Reform came into force.

Under Article 93, the Ministry of Welfare and Labour Policies should encourage national networks of CSOs to promote means of self-regulation through which these entities can exercise supervisory functions over their associate organisations. Under Article 96, national networks should possess technical and professional capacities/criteria in order to exercise supervisory functions over their associate organisations. A Ministerial Decree will be issued by the Ministry of Welfare and Labour Policies to determine technical and professional criteria to be met by national networks to exercise supervisory functions. Within the same Decree, the Government will also clarify the application process through which national networks of CSOs can apply to be authorised to exercise supervisory functions. To date, no such decree has yet been issued by the relevant Ministry to clarify these regulatory aspects.

Through the above norm, the legislator has formally recognised and welcomed self-regulation as a complementary means of accountability to supervise CSOs, emphasising the role national networks can play in that respect. Essentially, the Reform has introduced new legal requirements that apply to the clear majority of CSOs and expanded the range of subjects called to exercise supervisory functions, including networks of CSOs. The new legislation has also made existing legal requirements stricter. In fact, CSOs are now subjected to stricter transparency and financial requirements compared to business enterprises, self-employers or political parties. For example, a business entity is required to publish its Social Budget only if it has an income of 20,000,000 Euros (under EU Directive 2014/95) whereas the head of a law firm, who earns more than 100,000 Euros, is not asked to publish his/her annual salary online. However, the Reform cannot be considered as a strict regulation. As already noted section 2 of this article, aggressive State regulation consists, either jointly or separately, in an intrusive legislative inference with the right to freely form and run a CSO, in policy measures imposing conditionalities on CSOs to engage in legitimate advocacy and/or economic activities, tax policies aimed at deterring donors from supporting CSOs, and limiting the supervision functions over CSOs only to governmental bodies. Obviously, this has not been the case of the Italian Reform. The new requirements are certainly strict, but their purpose is to make the whole sector more transparent and responsible. The Italian third sector has grown exponentially in the last two decades in terms of the number of CSOs formed, and it also expanded significantly the range of social services provided. By performing well and by expanding the range of social services provided, the Italian third sector became more exposed to clientelism, corruption and criminal infiltration. The scandal "Mafia Capitale" clearly proved this point. Consequently, the introduction of stricter legal requirements was deemed necessary to avoid similar phenomena in the future.

Overall, the extent to which the CDV has successfully prevented the implementation of undesirable State regulation cannot be adequately assessed, as the new law cannot be labelled as aggressive legislation neither was there an attempt to implement strict policies while the Reform was being drafted. However, given the numerous uncertainties that characterised the drafting process – especially in terms of how strict the new legal requirements would have been in the final text – the CDV was used strategically as a mechanism of preventive self-defence against hypothetical legislative interferences to the sector's autonomy, which were not unlikely to be implemented because of the scandal. Essentially, CSOs sent a clear message to the legislator through the definition of self-regulatory norms: the sector is capable of self-supervising itself through non-binding norms aimed at making CSOs more accountable and transparent. Therefore, any attempt of over-regulation aimed at subjecting CSOs to the mere supervision of an external political agency would have been seen by CSOs themselves as an intrusive interference into the sector's independence. In that respect, the CSOs viewed the introduction of self-regulation within the new legislative framework optimistically and, as soon as the relevant amendment was incorporated in the Reform, FTS released an official statement declaring:

'We consider the introduction of forms of self-regulation for the third-sector very positively. This was a request we made from the beginning of the legislative consultation and we believe that [self-regulation] is the most suitable instrument for our world. We really like the idea of accountability and transparency that passes through self-regulation for the large networks of associations' (Tutto Non-Profit, 2015).

Considering that the new legislation accommodates the idea of self-regulation, and because of the key role that both networks and organisations can now play in that respect, the CDV has succeeded in affirming the importance of self-regulation as a tool of accountability in monitoring the sector. This implies that State-based regulation and self-regulation could complement one other when it comes to sector supervision and, more importantly, that self-regulation can be used strategically to send a successful signalling to the legislator while third-sector policies are negotiated and drafted.

4.3.: *Authenticity & Improved Quality: CDV Compliance Rate, Monitoring and Sanctions*
In terms of authenticity and improved quality, the effectiveness of a self-regulatory instrument depends on its compliance rate, which is determined by the extent to which CSOs comply with industry standards. As shown in Table 4, the overall compliance rate stands at 45%. The CSO with the highest individual compliance rate managed to comply with 75% of the items of the CDV, while, the worst performer complies with only 10% of them. Despite cross-national comparisons hardly being able to be performed due to the lack of systematic research on the matter, a study conducted in 2012 about Spanish NGOs that, based on research that used similar requirements to assess their websites, obtained an overall digital transparency level of 30% (Rodriguez et al, 2012). Similarly, a more recent study on British-based NGOs working on international development, dated 2015, revealed that only 41% of them disclose online governance and financial information (BOND, 2015).

As to compliance with individual requirement, Table 5 shows that the lowest scoring requirements are environmental permits and other actions taken to protect the environment (4%). These are followed by CVs of board members and the type of employment contract stipulated with workers (both stand at 8%). Meetings with stakeholders represent the highest-scoring requirement (82%), followed by the disclosure of consultative meetings with public administrations (78%) and publication of Partnership I and II (68%). Given the lack of documentary sources about the number of sanctions issued by the committee in the case of non-compliance, Mr Palumbo was asked to provide such data when interviewed. So far, the committee has not issued any sanctions, and it has never exercised its supervisory functions even if, under the CDV, it is required to do so at least once every two years. Obviously, these dysfunctionalities in terms of monitoring and sanctioning can cast doubts on the credibility of the CDV as a genuine voluntary club. When questioned about this matter, Mr Palumbo has clarified that issuing sanctions in the case of non-compliance could contradict — as it is almost

antithetical — the whole of concept of network that is, by definition, deeply grounded on the concept of cooperation among members. When it comes to voluntary clubs, scholars have in fact highlighted that the threat of sanctions is normally a good sign of a club's credibility (Prakash & Gugerty, 2010). However, at the same time, voluntary clubs sponsored by CSOs themselves — like FTS Lazio — may not want to acquire a reputation of being severe and adversarial through imposing sanctions to their members (Prakash & Gugerty, 2010). In a similar vein, there can even be a fear that, by issuing a sanction for non-compliance, the reputation of the club as a whole could be weakened, despite the sanction being directed towards a few 'bad apples' (Prakash & Gugerty, 2010). In terms of cohesion and network unity, clubs sponsored by CSOs themselves may have a greater impact if they retain CSOs with imperfect compliance within the club because they can still exercise leverage over CSOs keeping their members together (Prakash & Gugerty, 2010). If the monitor brings any enforcement action for non-compliance, it risks paradoxically diminishing the reputational value of the club to external observers or even to compromise the unity of the club and therefore it was suggested that monitoring could perhaps pledge secret enforcement (Galle, 2018).

4.4.: *Obstacles, Barriers and Challenges to Norm-Compliance*
The analysis will be partial and incomplete without knowing the reasons behind non-compliance as well as practical obstacles faced by CSOs in disclosing information online. As will be shown below, the findings point out that there are many reasons that refrain CSOs from complying with the CDV which do not entirely depend on organisational commitment to adhere to voluntary standards. Basically, non-compliance can be of two sets of reasons: objective and subjective. Non-compliance is due to objective reasons (or obstacles) when it is related to the normative quality of self-regulation, regardless of the organisational commitment to comply with voluntary norms. In this case, non-compliance is dictated by the content of the norms themselves, which fail to apply to some CSOs. On the contrary, non-compliance is due to subjective reasons when

it is exclusively related to an organisational failure to comply with voluntary standards, even if there is a reasonable but intrinsically subjective motive behind it (such as a lack of organisational resources or an ideological hostility towards the idea of self-regulation).

4.4.1.: *Objective Non-Compliance: One Size-fits-all Approach, Lowest Scoring Requirements and Lack of Item*

The CDV applies indiscriminately to all CSOs belonging to FTS, a network that brings together organisations very different from each other in terms of size, area of activity and type. For this reason, the drafters of the CDV decided to accommodate organisational diversity through the definition of '*generic and flexible indicators*' (Prof. Cosentino) that should be applicable to every organisation. Despite this, a couple of self-regulatory norms fail to apply to some organisations or, in most extreme cases, to the vast majority of them. These self-regulatory norms have been drafted following a one-size-fits-all approach, assuming erroneously that they can apply to all CSOs regardless of their nature.

The reference is *in primis* to the lowest scoring requirements (4%) that, as shown in Table 5, are a) environmental permits and b) other actions taken by CSOs to protect the environment. Normally, a non-profit entity must hold environmental permits from a local authority only if it produces goods or carries out activities that could potentially cause pollution. Other than this exceptional case, CSOs are not required to hold any sort of environmental permit. Considering that a small portion of CSOs belonging to FTS Lazio is involved in the production of goods, it is likely that the compliance rate (4%) for this specific requirement is directly proportional to the actual number of CSOs that are required to hold environmental permits under national legislation. With a similar reasoning, it can be argued that a CSO would be in a position to report publicly 'other actions that has taken to protect the environment' only if it is an environmentalist group or alternatively if the organisation produces goods that could have an impact on the environment.

In some instances, the failure to comply with the CDV is associated with the lack of an item at organisational level that needs to be disclosed online. This is typically the case for prizes awarded to CSOs and/or to individuals working for them, in which the compliance rate is slightly higher than 50%. This trend indicates that more than half of the CSOs belonging to FTS received a formal recognition for their work done. Intuitively, it could be argued that the remaining half, or a smaller portion within it, does not comply with this requirement because it was never awarded any prize. In practice, it is likely that recently-formed CSOs or those who are badly managed fall into that category.

4.4.2.: *Subjective Non-Compliance: Lack of Resources and Prioritisation*

Nowadays, CSOs are called to report their actions towards a variety of stakeholders aside from carrying out their charitable works. When it comes to reporting, time and resources available can significantly influence to whom CSOs should report their actions, as different stakeholders require the employment of different means of accountability (Brown & Jagadananda, 2007). Evidence from the field suggests that CSOs prioritise legal and tax reporting over self-regulation and beneficiary accountability, because a failure to do so would result in legal or financial liability:

"*We would like to focus more on our charitable work and organise more public meetings with our beneficiaries to plan activities, discuss campaigns or assess the quality of our services. Unfortunately, we do not have enough time and we have to prioritise disclosure statement and legal reports… these activities take a lot of time off… If we fail to comply with such mandatory requirements, we would be held liable*" (Delegate FTS Lazio, I).

This statement essentially re-confirmed (Ebrahim, 2003) that a government which provides the regulatory environment within which CSOs operate, has a significant leverage to guarantee accountability compared to a self-regulatory body or a network such as FTS. In a similar vein, the lack of financial resources forces CSOs to focus primarily on their work:

"*Due to the lack of financial resources, we are currently investing more energies, time and human resources on our charitable work rather than focusing on self-regulation*" (Delegate FTS Lazio, B).

Another reason for non-compliance is the prioritisation of other self-regulatory instruments over the CDV as it emerges from the following statement:

"*Information appears on our organisation's website regardless of the CDV… we did not publish the financial budget though… we paid more attention to another code of conduct, which was developed in close cooperation with the public administration, focused on performance reporting*" (Delegate FTS Lazio, D).

According to this research respondent, a code of conduct developed in co-regulation with the public administration is perceived as more valuable than the CDV. The reason behind this preference rests on the idea that reporting organisational actions to the public administration is more beneficial than disclosing information online to the general public. Essentially, an organisation can prefer one self-regulatory instrument to another on the basis of regulatory structure and the body (or stakeholder) to which actions must be reported. In this specific instance, the public administration is preferred to public opinion, and performance reporting is considered more important than online transparency.

4.4.3.: *Subjective Non-Compliance: Disclosing Managers' CVs*

Under the CDV, the first item that is supposed to appear online is the CV of people managing the organisation, such as the president, vice-president, director and members of board of directors. CV disclosure enables stakeholders to know the professional background of managers, as the credibility of an organisation is to some extent shaped by the skills and experience of individuals leading it. Table 5 indicates that the overall compliance rate for this requirement is one of the lowest (8%). Rather than publishing CVs, most CSOs provide on their webpages the name and contact details of members of board of directors together with an organisation chart.

To understand the reasons behind the lack of CVs online, focus should be brought on a debate that took place, when the CDV was being drafted, between the governing bodies of the network and CSO representatives. When Mr Palumbo was asked whether FTS Lazio experienced any tension between different organisations in drafting the CDV (and if so, what would he say the main fault lines were), he replied:

"*While drafting the CDV we encountered resistance, especially from International-NGOs, in requiring CSO managers to disclose their CVs online. The reason behind such resistance, which we then overcame, was that some practitioners lead CSOs while working for public institutions or having previously served governmental bodies. From a legal perspective, an individual is allowed to work for a public administration and direct a charity simultaneously, as long as he/she does not get paid for his/her charitable work carried out.*"

It appears that the failure to disclose CVs is a burning issue among CSOs (especially for international-NGOs) and that CSOs were deliberately obstructing the codification of this disclosure requirement within the CDV checklist, whereas now they are actively sabotaging compliance with it. This trend of non-compliance essentially highlights a long-standing problem within the sector: revolving doors between politics, public administration and the third-sector. In that respect, it is important to note that the phenomena of revolving doors concerned many notable NGOs operating worldwide and consequently it should not be seen as an isolated Italian trend. For example, Human Rights Watch former advocacy director Tom Malinowski, served as a special assistant to US President Bill Clinton prior to his appointment, which he then left after being nominated as Assistant Secretary of State for Democracy, Human Rights & Labour under John Kerry (Alternet, 2014). Similarly, Save the Children former chief executive Justine Forsyth and Oxfam trustee David Pitt-Watson were both former advisors to Labour's leaders Tony Blair and Gordon Brown respectively (*The New Internationalist*, 2014). Overall, the failure to comply with this requirement is related to a structural feature that appears to be a widespread and systematic trend among CSOs.

4.4.4: *Subjective Non-compliance: Lack of Participation in Drafting the CDV and Ideological Hostility towards Self-Regulation*

Another challenge to norm-compliance is related to the way in which this self-regulatory instrument was developed. As noted in section 3.3, the CDV was drafted by a Panel of Experts who identified the requirements applicable to CSOs. During the drafting stage, CSO representatives were consulted sporadically, and subsequently they ratified the final version of the CDV. This way of working was seen negatively by some CSOs who complained about their lack of participation in the drafting process:

 "*Empowering a panel of experts to define self-regulatory norms took power away from the ruling bodies of our network. Even if there have been moments of consultation between the panel and the network during the drafting process, the experts left a technocratic imprint on self-regulatory norms. Empowering a panel of experts of such important function made practitioners think that their contribution to the CDV was pointless and, in the end, we [practitioners] did not realise how much each of us should have committed in drafting this instrument*" (Delegate FTS Lazio, J).

The lack of involvement of the CSOs in drafting the CDV is viewed as a sort of "expropriation of functions", as the body empowered to draft the CDV should have been composed by practitioners or alternatively, it should have been one of the ruling bodies of the network (e.g. network assembly). This is why self-regulatory norms are labelled as "technocratic". The lack of involvement of practitioners in setting self-regulatory standards undermines the idea of self-regulation in addition to highlight an obstacle for norm-compliance; basically, the CDV is viewed by the research respondent as an instrument for CSOs but not as a code of conduct written by CSOs.

Finally, there was a practitioner who considered the definition of common standards of behaviours as the product of professional elite of activists, which can be hardly accepted by the most traditionalist of Italian associative culture:

 "*The increasing attention on defining common standards of behaviour can be seen as the triumph of certain 'aristocratic activists', who want to report their actions primarily to institutions and public opinion... [such a way of thinking] neglects the mass popular association culture that developed at a grassroots level and left its mark in history*" (Delegate FTS Lazio, I).

Rather than identifying practical obstacles to norm-compliance, this research respondent pointed out an ideological refusal to self-regulation that, due to its "aristocratic roots", is incompatible with history and culture of certain CSOs. Both respondents suggest however, that there can be resistances in bringing an accountability culture in the third sector that has an obvious expert's identity, who was deeply influenced by the business world in the drawing up process of the CDV (see section 3.3), and that did not genuinely develop from CSO's activities.

Conclusion

This paper contributes to academic and societal debate on self-regulation in many ways. First, it represents the first systematic academic study on CSO's self-regulation in Italy. To my knowledge, a systematic and comprehensive study on CSO self-regulation in Italy has never before been conducted. Despite the narrow geographical scope, findings would be relevant not only to Italian CSOs but also to those countries where CSOs are under pressure because of their weak accountability performance, and to those contexts where civil society self-regulation is still an emerging trend. The research findings would be equally important for those contexts in which CSOs are exposed to criminal infiltrations (e.g. Mexico). Beyond the analysis on the effectiveness of self-regulation, the magnitude of Mafia Capitale scandal shows that CSOs can be exposed to corruption despite civil society is regarded, by definition, as an antidote to corruption (UNODC, 2019). The "Mafia Capitale" scandal also revealed the cultural and social dimension of organised crime, which operated within a wide institutional and civil relational context, and the complexity of how organised crime works in practice, given that local gangs were able to interact with, penetrate and manipulate the Roman civil society to achieve illicit purposes. At the same time, the accountability narrative of the "Mafia Capitale"

scandal helps us to develop a better understanding of how accountability standards are negotiated in the aftermath of a charity scandal.

In that respect, this paper also contributes to the academic discourse studying the inter-play between State-based regulation and self-regulation from a comparative perspective (see, for example, Breen et. al., 2017) as findings indicate that the self-regulation can be employed as a tool to protect the sector's autonomy against hypothetical legislative interferences while third-sector policies are negotiated and drafted. The new Italian legislation accommodates the idea of self-regulation, emphasising the key role that CSOs networks can now play in self-monitoring the sector. On the contrary, self-regulation has been heavily criticised in the aftermath of charity scandals that took place elsewhere in the world, especially in the case of Oxfam GB in Haiti 2018, in which self-regulation was labelled as ill-suited in providing adequate oversight of what emerged as the central problem in the Oxfam case (Phillips, 2019). In its report on the sexual exploitation and abuse in the British aid sector, The House of Commons International Development Committee concluded that the sector and the legislator should move beyond self-regulation, because it failed to ensure that safeguarding standards are being upheld by CSOs (House of Commons International Development Committee, 2019).

Secondly, the paper enriches the academic debate by providing a theoretical model to explain non-compliance, drawing a distinction between objective and subjective reasons of non-compliance. Findings suggest that there are many reasons behind non-compliance which, in some instances, do not depend solely on a CSO's commitment to comply with voluntary standards (objective reasons of non-compliance). The most important policy implication arising from this theoretical distinction is that the overall compliance rate should be adequately calculated, or even discounted, when it comes to objective non-compliance. In other words, the overall compliance rate (which currently stands at 45%) would be higher if it was recalculated, exempting from the calculation those voluntary requirements that are grouped under the category of objective

non-compliance as they fail to be applicable to CSOs. This theoretical model can be further tested and applied to other self-regulatory instruments.

Lastly, this paper represents the first academic attempt to apply the One World Trust blueprint to test the effectiveness of self-regulation considering its own objectives. In doing so, it provides a methodological paradigm that can be used by other researchers to measure self-regulation effectiveness in other settings. Even if quantitative data (e.g. data on compliance and those on public trust and donations) can be generalised statistically, qualitative data on non-compliance are limited to a small sample of CSOs belonging to FTS Lazio (37% of FTS Lazio membership). This is the main research limitation that has been attenuated by purposefully selecting respondents to represent all the diverse sides of the network under investigation.

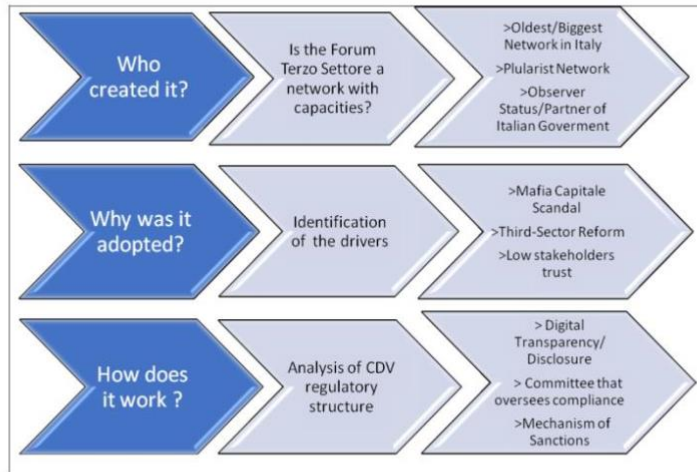**Figure 1: Step I, CDV: Regulatory Body, Drivers and Regulatory Structure**

Who created it?	Is the Forum Terzo Settore a network with capacities?	>Oldest/Biggest Network in Italy >Plularist Network >Observer Status/Partner of Italian Goverment
Why was it adopted?	Identification of the drivers	>Mafia Capitale Scandal >Third-Sector Reform >Low stakeholders trust
How does it work ?	Analysis of CDV regulatory structure	> Digital Transparency/ Disclosure > Committee that oversees compliance >Mechanism of Sanctions

Figure 2: Step II, Testing the Effectiveness of CDV

Drivers of CDV	Conception of Effectiveness	Expected Benefits (Measures of Efficacy)	Indicator to be measured	Expected outcomes (Are benefits achieved?)	Method Analysis Data
Low Public Trust (scandal)	Successful Signalling	Improved Public Trust	Public Perception of Civil Society and Donation Rate	Increased Public Trust, Increased Donation	Edelman Trust Barometer, EURISPES Report on Italy, Data National Institute of Donation
State Regulation (Third-Sector Reform 2014-17)	Successful Signalling	Discourage Undesirable State Regulation	Content of New Regulation	Decline of Aggressive State Regulation	Legal Analysis of Reform
Improving Capacity Building & Learning	Authenticity and Improved Quality	Self-Regulatory Standards are complied with, Obstacles, Barriers and Challenges to norm-compliance	Compliance Rate, Number of Sanctions issued by the committee and Reasons behind non-compliance	High Overall Compliance Rate	Assessment of CSOs' Websites + qualitative surveys, FTS' meetings notes and recorded interviews.

Figure 3: Differences between abolished and new legislation

Legal Norm	(Before) Abolished Legislation	(Now) Third-Sector Code 2017
Duty to Drawn-up Financial Budget	Yes, Certain CSOs (depending on legal type)	Yes, all CSOs (income above 220,000 Euros)
Duty to Publish online Manager's Salary	—	Yes, all CSOs (income above 100,000 Euros)
Duty to Publish online 'Social Budget' (Performance Report)	—	Yes, all CSOs (income above 1,000,000 Euros)
Ministry of Welfare and Labour Policies exercises monitoring functions over the sector	Yes	Yes
Establishing an internal monitoring body, organisational level.	Yes, certain CSOs (income above 1,032,913.80 Euros) + Bank Foundations and Lyric Foundations	Yes, all CSOs (income above 220,000 Euros)
Self-Regulation within Networks of CSOs as a means to monitor the sector	—	Yes

Table 1: Trust in Civil Society I - Source: Eurispes Annual Report on Italy 2016.

EURISPES Indice Fiducia	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Presidente Repubblica	63,2	58,5	62,1	67,9	68,2	62,1	44,7	44,2	45,3	52
Parlamento	30,5	19,4	26,2	26,9	15	9,5	9	16	10,1	20
Governo	30,7	25,1	27,7	26,7	14,6	21,1	19,2	16	18,9	28,6
Magistratura	39,6	42,5	44,4	47,8	53,9	53,9	42		41,4	28,8	35,3
Pubblica amministrazione	26,9	20	22,5	25,1	19,1	17,0	17,5	21	26,9	22,6
Carabinieri		57,4	69,6	75,3	72,6	75,8	77,3	69,9	73,4	69,9
Polizia		50,7	63,3	67,2	66,8	71,7	75	61,8	63	73
Guardia di Finanza		46,3	62,7	66,9	64,1	63,3	71	58,8	66,8	66,8
Partiti	12,6	14,1	12,8	12,1	7,1	6,8	7,3	6,5	15,1	11,9
sindacati	26,7	19,5	21,5	22	21,3	17,2	19,5	19,2	33,9	21,4
Chiesa	60,7	49,7	38,8	47,3	40,2	47,3	36,6	49	62,8	52,5
volontariato	78,5	71,6	71,3	82,1	79,9	77,4	75,4	74,5	78,8	73,8

Table 2: Trust in Civil Society II – Source: Edelman Trust Barometer 2016.

Post-Recession Highs

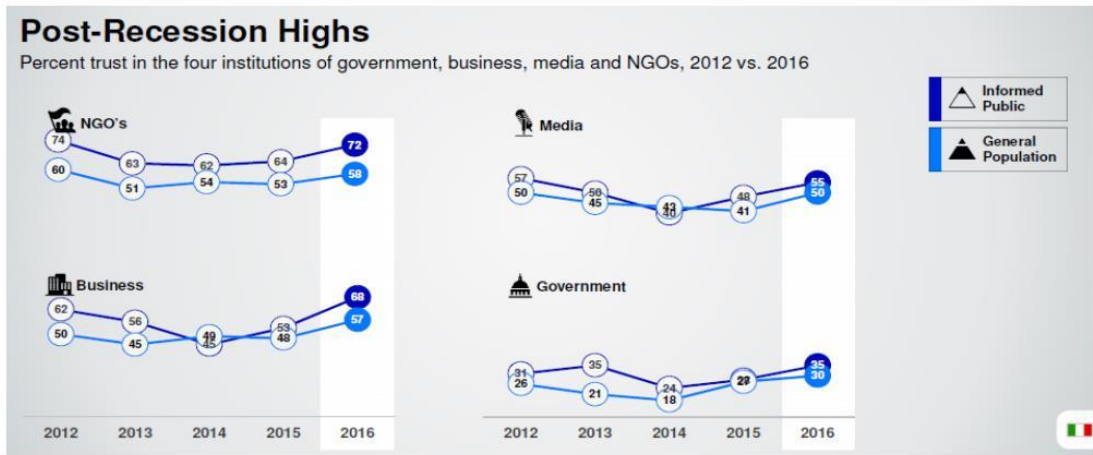Percent trust in the four institutions of government, business, media and NGOs, 2012 vs. 2016

Table 3: Rate of Donation – Source: Italian Institute for Donation 2017.
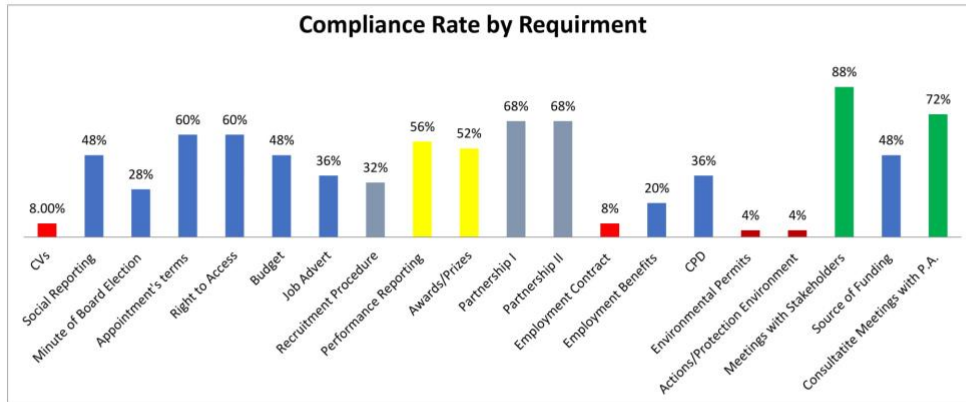
Table 4: Compliance Rate by Organisation

Overall Compliance Rate: *45%*

Top Performer: *CS0 25* [75%] **Worst Performer:** *CSO 17* [10%]

Number of Sanctions issued by the Committee: 0 [period 2015-2017]

Table 5: Compliance Rate by Requirement

Highest Scoring Requirements

- Meeting with Stakeholders [82%]
- Consultative Meetings with P.A. [72%]
- Partnership I [68%]
- Partnership II [68%]

Lowest Scoring Requirements

- Environmental Permits [4%]
- Actions taken to protect the Environment [4%]
- CVs [8%]
- Type of Employment Contract [8%]

Endnotes

(i): Based on an extensive review of existing instruments developed worldwide, the One World Trust blueprint (Obrecht, 2012; 20-21) indicates that, in a hostile political environment, it is likely that CSOs adopt initiatives with no formal system of enforcement and reporting, as the presence of the latter might require too many resources in contexts where CSOs already struggle to operate. In supportive operational contexts, characterised by no policy restriction on CSOs, self-regulation can instead take place in all different models.

(ii): "Public Trust" is a controversial concept and there is room for contestation over its exact definition, and yet it is a key concept contemplated in the accountability agenda of many watchdogs. On this particular aspect, see Keating and Thrandardottir (2017) where the authors make a lengthy list of examples. For instance, the Charity Navigator (2016) emphasises that "charities that are accountable and transparent are more likely to act with integrity and learn from their mistakes because they want donors to know that they're trustworthy." Similarly, State regulatory institutions, such as the Charity Commission of England and Wales (2016) are tasked with inspiring "public trust and confidence in charities' and '[enhancing] the accountability of charities to donors, beneficiaries and the general public." The Edelman Trust Barometer – which is actually employed in this research to measure public trust in civil society – emphasises how "trust is critical as a driver of [organisational] reputation." All of these statements stress 'why' trust is relevant for private and institutional actors and 'why' people should care about it. However, none of them define the concept of trust itself. In the social sciences, a well-packed scholarly definition of trust is the one provided by Sapsford et al (2015; 2017): "Trust is a feeling of confidence in those around you and/or in things unseen – in the abstract 'other people' who are not named or visualised but whose assumed reliability underlies transactions outside the sphere of immediate family and friends. It is also a cognitive state, the perception of socioeconomic and sociopolitical systems and relations as regularities on which one may depend." This definition was employed by researchers to measure trust in post-Soviet countries as well as in the Middle East (together with corruption and social cohesion).

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Indigenous Peoples' Identity vs. State's Right to Integrity: An Asia Overview

Magdalena Butrymowicz

Article Information

Abstract

Indigenous and tribal people groups number around 370 million people living in 70 different countries. Indigenous inhabitants are usually understood as maintaining an identity in relation to a specific territory, and tribal peoples who may share indigenous characteristics are often people forcibly resettled from another territory yet maintaining their tribal social structure. Whenever the topic of indigenous peoples' rights is encountered in international fora, it invariably opens a discussion on state's internal instability; and particularly, the issues of self-determination and the right to identity typically raises fears on the part of states. It is therefore worth investigating the right to identity in the context of guaranteeing state integrity. If identity is defined as the right to be someone non-identical to state citizenship, and, at the same time, as a right to be united with someone else who is in the same position, the question arises whether a legal claim might be lodged regarding one's collective 'independence' of state determinations. Before any resolution to this dilemma can be proposed, however, the two conceptual sources of the potential conflict should be defined — the state and indigenous people, and next, the right to identity oneself. This topic is widely discussed by scholars and politicians in North America, but much less in Asia. This article examines issues around the definition of indigenous people as well as their role and position in a given state framework; it also attends to the problematic issue of the parameters of the state's own identity — specifically in relation to the Asia regions.

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Indigenous inhabitants are usually understood as peoples consistently living on a specific territory, and tribal peoples are often people forcibly resettled from another place yet having maintained tribal social structures.[1] When the topic of indigenous peoples' rights is routinely referred to in international policy or legal fora, it often opens up a discussion concerning a given state's instability 'from the inside'. In particular, the issues of self-determination and the right to identity, raises some necessary concerns on the part of state entities. It is therefore worth analysing the issue of the right to identity in the context of normative guarantees to state integrity.

1. Definitions of the state

The theory of state encompasses numerous, frequently contradictory, definitions as well as concepts and theories regarding its origins and formation. Thomas Hobbes (1588–1679) often provides reference for early conceptions of the modern state, asserting that our original instinct for survival relates to a permanent state of fear and anxiety. This, in turn, entails a state of a continuous conflict with neighbours, making consistent peace and affluence an exception not a norm; in Hobbes's view, the solution to this situation is subjecting an otherwise wild and independent human nature to the governing power of a single agency. A ruler in this capacity is not a party to a contract, and Hobbes's state model has often been cast as an ideal model for absolute or totalitarian rule. Hobbes's notional state also assumed the exclusive participation of the people in its creation: the state is planned and created in such a way so as to ensure absolute safety, welfare and compliance in a collective and incontestable consensus.[2]

An early critic of Hobbes's influential rationale for a state was Samuel von Pufendorf (1632–1694), who asserted the obligation to protect society from a ruler; he understood the state as a useful organisation, protecting against those who acted against natural law. John Locke (1632—1704) further developed a protected collective cohesion with the seminal concept of 'social contract', where, similar to Pufendorf, a principle of reciprocity governed the relation between people and rule or state. In Locke's view, Hobbe's prehistoric man was not led by fear, but acting under the influence of the laws of nature he was bound to, notably the inviolability of life, freedom and the property of other; even in a primal state, he could expect reciprocity from others. Being aware of such reciprocity, the notional prehistoric man surrendered power and assigned it to the community, with a possibility of revoking the rights established by it. A state can be said to be born on the basis of an agreement formulated in this way, and people unite in one such community become subjected to jointly established norms and laws. Tribunals can be created to which they could appeal and which also punished infringements, and the members of the community could elect the actors in such tribunals from among themselves, with that act of empowerment being a seminal moment of what we understand as 'civil society'. As in a process of election, however, the will of the majority tended to prevail over the minority or individual, and a main task of authority was not just to exercise power but to protect the limited power of others, such as protecting the ownership rights of its members. Locke's original political theory led to a widespread rejection of the arbitrary power of absolute rule and presented the possibility of replacing an authority (that violates rights) with an election of the people who had established it in the first place; new representative forms of government could be devises that carried with it an obligation to act in accordance with the expectations of the community that elected it.[3] Later, the concept of state was defined by its institutionalisation and legal complexification of such processes and its functionalism (in a psychological and social context). From a legal point of view, the modern state was primarily defined during the 7th Pan-American Conference in Montevideo (Uruguay) publishing the now

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[1] C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 (accessed 3.04.2019).

[2] J. M. Kelly, *Historia zachodniej teorii prawa*, Kraków 2006, pp. 230 – 239.

[3] ibidem, pp. 241 – 242.

famous international legal statement of the *Montevideo Convention on the Rights and Duties of States* (1933). Three factors herein define the modern state: a territory, people and power. Three criteria of the structural elements of a state are legally decisive: power over a given territory has to be effective, which means that the state manages a stable population as much as borders and boundaries unilaterally; and as a state it is recognised as such by other state entities (of which it engages international relations). Thus, the state has the facility to manage legal relations with other state entities, both productive and potentially conflicting. In this sense, independence and sovereignty is the basis of international relations.[4]

Without analyzing the modern concept of the state in detail, there is one dimension of this original international legal definition of state that is central to this article: that a stable population living on a geographically defined territory must identify with that state as well as being subject to it.[5] Some similarities in conceptualisation can be also traced in some Asian philosophies,[6] which often place the filial piety[7] as a root of all common virtue, and as cornerstone of morality and the foundation of the state. For Han China, the foundation of the state was the family, where central authorities negotiate power sharing with local clans. In this sense, the state and the extended family unit mirror each other, except that there is little space for the development of an interrelated entity of civil order or society.[8] Professor Zhiwel Tong has defined the state as the subject of power, not the subject of rights; the subject of state ownership is the state, and

ownership is a civil right, which means that the state is one of the subjects of civil rights, and also enjoys civil rights.[9] On the other hand, Indian jurist and reformer, Babasaheb Ambedkar (1891-1956), perceived the state as a necessary institution but acting under a categorical condition. The source of state's existence comes from society, economy and religion, and the condition is a necessary faith from the people in the validity and moral authority of the state. If that is not the case, the state is just a facade for anarchy (or law-less rule, in this case the rulership of the state). The state therefore has a pragmatic role to play: firstly, it is responsible for maintaining the right of its subjects to life and the forms of liberty that allow for such a faith to be expressed; secondly, the state offers justice or the arbitration of collective co-existence and the exercise of the power of liberty; thirdly, the state instils trust by promising freedom from want and from fear. In this sense, the state is a tool or an instrument used to maintain a citizens' happiness.[10] The last voice to be evoked in this narrative discussion on the definition of the state is Mohanda Karamchand Gandhi (1869-1948), who largely rejected Western concepts of state and state sovereignty. Building his political philosophy on the *dharma* — the Hindu concept of 'influences', which shape the moral feeling and the character of people and become the code of conduct — Gandhi defined this general conscience of a people as central to state rule. This was not a fixed code of rules, but a living power, which at once rules, develops and evaluates a society. Christian ethics and humanism also played a role in Gandhi's framework, which amounted to a total critique of the western concept of state as the organisation of violence. Informed by his personal experience of colonial state institutions, Gandhi's priorities were the harmonious freedom and moral sovereignty of the social collective. Against Hobbes, individuals were not irreducibly individual and not only collective in terms of their investing their own self-determination in an authoritarian

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[4] R. Kłosowicz (ed.), Państwa dysfunkcyjne i ich destabilizujący wpływ na stosunki międzynarodowe, Kraków 2013: pp. 11 -37.

[5] H. Dudkiewicz, Prawo międzynarodowe w kwestii państwa upadłego, [in:] R. Kłosowicz, A. Mania, (ed.), Problem upadku państw w stosunkach międzynarodowych, Kraków: 2012, pp. 79 - 83.

[6] Confucian, Chinese Buddhist and Taoist ethics.

[7] Respect to one's elders, parents and ancestors. Ch. Ikels, *Filial Piety: Practice and Discourse in Contemporary East Asia*, Stanford University Press 2004: p.1.

[8] *filial piety* [in:] *Encyclopaedia of Asian Philosophy*, ed. O. Leaman, Routledge 2001: pp. 197 - 198.

[9] Z. Rong, Right, *Power, and Faquanism: A Practical Legal Theory from Contemporary China*, Leiden, Boston: Brill 2018: pp. 129 - 132.

[10] K. Raghavendra Rao, *Babasaheb Ambedkar*, Sahitya Akademi 2003: pp. 37 - 39.

entity of pure abstract and indifferent rule. The ideal state (*Swaraj*) is where railways, hospitals, army and navy, as well as law and courts, exist, but are governed by free people, free from bureaucratic interments of oppression, and free not to conform to collective regulation. Government exists, but is based on popular consent, and the same principles of equality, truth and non-violence of all society; government has a function but no internal superiority to other forms of social organisation.[11]

This brief discussion is concluded with the observation that traditional definitions of the state, West and East, assume a certain identification, trust, assent or faith in the state (or entity of rule) on behalf of a coherent and cohesive 'people'. How is state defined under conditions of irreconcilable ethnic diversity, where distinct groupings and absolute forms of unity and identity between separate groups within a single territory, and where the state is experienced by these groups as an imposition and an artificial construct. A condition of tacit (and perhaps open) conflict between a people group and the state may persist, which may lead to state disintegration, or just a weakening of sovereignty over a defined territory, or perhaps just an imposition of arbitrary rule. As counterfactual to the above concept of state, it is possible that brute rule succeeds in maintaining control of a diverse populace and a particular territory but without a consenting populace and where its population does not identify with it. In the era of international law, however, this cannot be recognised as a valid state formation. Nonetheless, can a specific group of people threaten the state in terms of their subjective non-identification with it? Can the lack of effective sovereignty over a segment of territory and a unit of its population threaten the necessary integrity of the state and its existence as legitimate state? While Asia holds many differing conceptions of state unity, authority, assent and belonging, and so on, international law is built on western political philosophy. We must therefore take

these conceptual problems as formulated into an Asian state context. What is the relation between state integrity and ethnic identity within an Asian state model?

2. Definition of the ethnic group in international law

We encounter a problem similar to the definition of the essence of the state with the definition of the term "indigenous people." In Polish literature, some authors, e.g. Magdalena Kryńska-Kałużna,[12] use the term "ludność tubylcza" [autochthonous people]. She makes an attempt at defining "indigenous" under international law, referring mainly to two conventions: International Labour Organisation no. 107, and no. 169.[13] The approach of Kryńska-Kalużna, however, deviates significantly from the contemporary understanding of indigenous peoples in international law. An international legislator uses the term "indigenous people" in terms of a group of people or a tribe, living on a particular territory, having its own culture, language and customary law.[14] As one important element of this definition is the moment, rejected by Kryńska-Kałużna, of the so-called "First Contact". [15] This is the indigenous peoples' contact with another ethnic group, in which or from which they acquired a dominant or subservient position at some point of historical time. The result of such first contact is the loss of effective sovereignty over territory, and being occupied in favour of another people group(s) threatening culture or language.[16] Thus,

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[11] A. Pasricha, *Rediscovering Gandhi vol. 4: Consensual Democracy: Gandhi on state power and politics, Gandhian studies and peace research series*, Concept Publishing Company 2010: pp. 8 - 12.

[12] M. Kryńska-Kałużna, "Indianin" w świetle prawa, *Ameryka Łacińska*, 1 (79) 2013: p. 107.

[13] Both conventions, in Art. 11 and Art. 15, respectively, define, in a descriptive way, ethnic people by using such phrases as: the first inhabitant, an ethnic group, original people or the first people. Indigenous & Tribal Peoples' rights in practice, A guide to ILO Convention no. 169, International Labour Standards Department, 2009: pp. 27 - 30.

[14] United Nations Declaration on the Rights of Indigenous Peoples, Resolution no. 61/295 of the United Nations General Assembly of 13 September 2007.

[15] R. A. Williams Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600- 1800*, New York 1997, p.37

[16] It is worthwhile indicating that the UN Declaration on the Rights of Indigenous People does not define at all the term "Indigenous People." Only in the preamble to the Declaration is there a description of indigenous peoples by means of the above-mentioned

the translation of the term "indigenous" as "tubylec" [autochthon] proposed by Kryńska - Kałużna does not comply with legal methodology. The term "tubylec" or "tubylcze" [a noun and adjective of autochthon] does not encompass all attributes by which indigenous peoples are defined. Her work, in its etymology, refers exclusively to one feature of indigenous peoples, which is the priority of living on (and occupation of) a defined territory. However, other features are bypassed, notably the cultural or language, an internal legal system or code of conduct, and, most importantly, a distinct, different identity. For no identification with the state as the good of all is inhabitants.[17] Such an understanding of indigenous/ethnic peoples is proposed in the aforementioned conventions of the International Labor Organization. This definition is based on the definition of indigenous peoples notably proposed by Martinez Cobo. He defined indigenous people as groups, people, communities, which have the history of living in a given area before colonisation or conquest, the result of which is settlement on their territory of another group of indigenous peoples, which considers itself different from other social groups living on the territory or some parts of it. They do not constitute a group prevailing on a given area and are therefore forced to take steps aimed at preserving their culture and identity, which has been passed over for generations; they have their own ethnic identity in combination with their own culture, legal and social system (or variation thereof). A crucial condition is *continuity*, in a time trajectory, of the existence of a given social group on a given area, and factual sovereignty on this area of the ancestors of a given group, as well as cultural and language differentiation. These conditions are associated with the right to identity of indigenous people, and this is, as Hilary N. Weaver wrote, like opening of a Pandora's box. Without analysing this topic in detail, it should nonetheless be noted that literature on this matter distinguishes three

spheres of identity: self-identification, community identification and external identification. There also pertains cultural identity, as one form of self-identification by people. Thus, identity means a common origin and identification with a common ancestor and/or common heritage, which leads to a social unification. Identity is shaped in the process of noticing and recognising one's own otherness against another social group.[18] The right to identity understood in this way has been guaranteed to indigenous peoples in Art. 33 of the UN Declaration on the Rights of Indigenous People.[19] The right to identity is thus the right to recognise otherness of a given social group from another group, in this case, a prevailing one and, further, warranting the right to self-determination and self-governance.

However, what is important is the recognition by a given state of a particular group as an ethnic group on a given area. Some states, despite recognising earlier a given group as ethnic in their later legislation, clearly refuse to award such a status and exclude them from the list of privileged ethnic groups. Such situation concerns, for instance, the population of the Chittagong Hill Tract,[20] currently living on the territory of Bangladesh. In the first constitution of Pakistan of 1956, Pakistan recognized a special status of Chittagong as ethnic people and confirmed it next in its constitution of 1962. Unfortunately, in 1964, the Chittagong population was removed from the list of autochthonous tribes, and the state of Bangladesh created in 1971, together with the constitution of this country adopted in 1972, does not mention the rights of indigenous people or

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attributes. In addition, Art. 33 of the Declaration gives Indigenous Peoples the right to self-determination. The United Nations Declaration on the Rights of Indigenous People, United Nations, March 2008: p. 12.

[17] Tubylec - 1. człowiek należący do rdzennej ludności miejscowej, 2. stały mieszkaniec jakiegoś terenu, Słownik Języka Polskiego PWN, https://sjp.pwn.pl/sjp/tubylec;2531245.html (accessed 3.04.2019).

[18] H. N. Weaver, *American Indian Quarterly*, vol. 25, no. 2 (Spring 2001): pp. 240 - 242.

[19] United Nations Declaration on the Rights of Indigenous Peoples, https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1 (accessed 3.04.2019).

[20] Hill Tract is a place populated by Bawn, Chakma Tanchangaya, Tipra, Lushai and Khumi peoples, living on territories on the south-eastern Bangladesh. R. Ch. Roy, *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh*, Copenhagen 2000, pp. 19 - 20.

even recognizes the existence of such groups on the territory of Bangladesh.[21]

Indigenous people/ethnic minorities are thus an internally and externally organised group of citizens of a given state, whose rights are guaranteed by international law. A fundamental right granted to them is the right to self-determination, yet this potentially threatens the existence of the state, which ceases to be monolithic and its territory is populated by indigenous people/ethnic minorities who reduce its stability. The examples shown above demonstrate the struggle of the indigenous people to be recognised or at least identified by lawmakers. What can be observed is the policy of denial towards indigenous people, or even hostility, an example of which is a state's attitude towards the Chittagong population. This leads to the assumption that, besides recognising this fact on an international level, an Asian state chooses to revert an indigenous status of a groups previously recognised as indigenous. By denying their dignity as such, the policy implication of this state is assimilation of such groups with society, potentially leading to their disappearance. This is not an inadvertent action but a purposeful behaviour of a state, which evidently works with a strong conception of homogeneity, favoured over diversity. The background of this tendency is the fact that most modern Asian states are governed by extended families whose historical and networked power is rooted in clan or tribe. The existence of clan or tribe, whose rights the state is obliged to recognise under the international legal regime, may risk upsetting the monopoly of a dominant tribe or relations between familial and tribal groups within the state-society complex. One reason why a state is not willing to recognise the existence of an indigenous people within its borders is the problem of recognition in relation to representation: this group will enter the networked space of shared power, whose coordinates are already determined. This observation originates with Babasaheb Ambedkar, who also says that the state is the purpose of

necessity, just as are its laws and internal structure.

Furthermore, regarding Asian states in postcolonial situations, the terms "ethnic minorities" and "indigenous people" should be understood in relation to each other. Historically, colonialism was also a reconfiguration of the indigenous order and often where dominant groups emerged by force or patronage, and such internal configurations can be seen over the region. The is why, following Martin Cobo, the terms indigenous, nation and ethnic minority, can be used interchangeably, depending on the state legal language.

3. The state's integrity principle vs. the right to identity

The principle of a state's integrity is grounded in the conditions that give rise to its constitution: currently it becomes necessary to satisfy the interests of different social and ethnic groups existing within state boundaries. A constitution is a legal act which incorporates various interests within the state, defends the integrity of a state entity and guarantees state integrity. A constitution fulfils two principle aims: it aims at state unification in terms of uniform values and legislation, and, additionally, it gives ethnic minorities a guarantee of respecting their rights and freedoms. It guarantees the lack of discrimination and equality in rights towards the majority. It also aims at elimination of national and ethnic minorities' demands, which might result in state's disintegration. Ralph Rerzlaff has asked how strong bonds between the minority and the dominant group have to be in order to guarantee relative loyalty of a minority group to the dominant group.[22]

In 1947, India, gained its independence and broke free from Great Britain's domination; and as most post-colonial countries, it fell into chaos. One can distinguish several basic ethnic groups (or rather religious minorities): Muslims, Scheduled Castes, Sikhs, Indian Christians, Anglo-Indians Paersees,

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[21] R. Ch. Roy, *Land Rights of the Indigenous peoples of the Chittagong Hill Tracts, Bangladesh*, Copenhagen 2000: pp. 44-47.

[22] R. H. Retzlaff, 'The problem of communal minorities in the drafting of Indian Constitution', in R.N. Soann ed. *Constitutionalism in Asia*, New York 1963: p. 55.

and indigenous Adivasis and Nagas. Furthermore, it overlapped with a religious conflict between Hindus and Muslims. Years of conflict and uncertainty led to developing a system in which ethnic and religious minorities remained under the exclusive influence of a dominant group of Hindus. It led to growing separatist movements on the part of the Muslin minority, which started to demand its independence. Great Britain, acting from the position of a "Big Brother," made some attempts at mediation in order to introduce more freedom and independence of ethnic minorities at the local level. Finally, on 16 May 1946, dominant social groups developed a consensus in the form of the Statement of May 16th, which was submitted to Great Britain as a joint position of the future Indian state. We can read in the statement that it is the goal of the persons signing the statement to create a joint and uniform state, with a weak centre, self-government division, with provinces autonomy, and guaranteeing rights to minorities. Particularly, this last statement contributed to the problems on the part of the Indian constituency, since granting rights, or even limited autonomy, to ethnic peoples contradicted the idea of united and strong India; on the other hand, they could not totally exclude minorities' rights, as it would lead to rebellion and state destabilisation. Thus, the state arguably remained the hostage of minorities.[23] Under the auspices of the British Crown, talks over the shape of the future constitution started; a committee for ethnic minorities and excluded areas was set up, which was divided into the following subcommittees: fundamental rights, ethnic minorities' rights, tribal rights and excluded areas rights. However, there was still a conflict between Muslims and Hindus, as a result of which on 29 February 1947 the British Crown announced that by June 1948, at the latest, power will be handed over to the local people of India. The consequence of it was the Statement of 3 June 1948, based on which two states were created: India and Pakistan. Thus, the earlier unified state (a British colony) was divided into two independent states. The result of this was, however, significant

weakening of the position of the Muslim population and marginalisation of its rights in the process of creating a new independent state.[24] The Indian state lost its territory to the benefit of indigenous peoples of Pakistan. Lack of any identification with the Indian state and exercising of the right to its own identity caused disintegration of the Indian state. The state was unable to stop the process of separation and ethnic groups were not willing to stay within the borders. They didn't associate with the Indian state ruled by the Hindu tribe and were strong enough to separate decisively.

However, the issue with indigenous peoples' rights did not end with detachment of Pakistan from India. Afterwards, the problem with citizenship remained. The Indian Constitution of 1950 and the Citizenship of India Act (1955) created a kind of a paradox in the history of both countries. On the basis of the two documents, the inhabitants of Pakistan and India were given the right to choose citizenship during some time interval. Within five years between the two documents, the inhabitants of both countries enjoyed relative freedom of movement on the basis of different travel documents; yet, the very issue of citizenship was not fully regulated in the constitution. Part II Arts. 5 - 11 regard mainly the question: who is a citizen of India? The answer to the question asked in the constitution was found only as late as in 1955, when the Citizenship Act entered into force. Nonetheless, pursuant to Arts. 5 to 8, India recognized two categories of citizenship acquisition: by origin and by residence. The Citizenship Act distinguished citizenship by birth, by descent, by registration, by naturalization, by incorporation of territory to India and, since 1986 by citizenship through accounting for in the Assam Accord.[25] A change made in 1986 gave citizenship of India to any person of the Indian origin (*ius sanguinis*), who settled down in Assam before 1 January 1967 and came from a specific territory, including persons

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[23] R. H. Retzlaff, 'The problem of communal minorities in the drafting of Indian Constitution', in R.N. Soann ed. *Constitutionalism in Asia*, New York 1963: pp. 58 - 59.

[24] R. H. Retzlaff, 'The problem of communal minorities in the drafting of Indian Constitution', in R.N. Soann ed. *Constitutionalism in Asia*, New York 1963, p. 60.

[25] A. Roy, *Mapping Citizenship in India*, Oxford 2010: pp. 30 - 38.

whose names were listed in the elections register of 1967 and were residents of Assam before its formal inclusion in India.[26] The specifics of the Assam region in India related to the region diversification and adoption of the principle: different yet equal. Differences consisted, first of all, in cultural and ethnic otherness of this region, including recognition of ethnic otherness of Assam. The issue concerned ethnic otherness off the Assam population from other groups living in India, which, after India's division in 1947, prevailed in Assam Province, and enjoyed considerable autonomy and independence. Assam is populated mainly by the Nagas and Adivasi and other tribes recognized by the Indian constitution as the Scheduled Tribes.[27] In the incorporation act of Assam into India, preservation of the ethnic unity of that area played a big and significant role. When promising in the incorporation act respect for ethnic otherness of Assam, the government kept the role of the final judge in immigration matters and those regarding granting citizenship. Protecting the state unity, the government remained the final judge in matters regarding settlement and naturalization in the Assam area. This policy resulted in protests of the Assam population against the influx of "aliens," who changed the ethnic picture of Assam dramatically. It was particularly visible during the elections in 1979, when the number of people entitled to vote in provincial elections grew from 45,000 up to 70,000. It led to mass protests in November 1980 against an unstable situation of the "aliens" in Assam. The political situation in Assam and boycott of central elections had an impact on the whole country, as a result of which political destabilization occurred in the region and it became necessary to resolve the situation fast. Troops were sent to Assam in order to stabilize the situation and re-elections were held, as a result of which the Illegal Migrants (Determination

by Tribunal) (IMDT) Act was adopted in 1983. The final agreement, which became effective in 1985 regulated the issues off cultural otherness of Assam and regulated anew the issues of citizenship. Yet, what is most important, is that one of the effects of this agreement was resignation of the whole government elected in the 1983 elections, dissolution of the General Assembly and new elections were called for December 1985, with the application of new criterion of establishing citizenship.[28] Therefore, for the second time in the 20th century, the existence of the Indian state and its internal stability was threatened, owing to exercising of identity rights by indigenous people.

The second problem was a long political debate within the committee of national minorities, in which two main social groups, namely, Muslims and Scheduled Castes, clashed. At the turning of 1949, social consultations over the constitution draft, were held with particular minority groups, which had their representatives in the Constituency regarding their position about safeguards and guaranteeing seats in the parliament. The issue concerned mainly the Muslim community, the representatives of which stated that they did not need to be guaranteed such right in the constitution. The consultations did not bring any effect, since Muslims and Sikhs were unable to develop one position. As a result of the said committee's and the advisory committee's work, the position of ethnic groups was shaped in the constitution as follows: Scheduled Castes received reserved seats and the right to vote in general elections, and also to participate in those elections. Indian Christians and Parsees were not rejected and not granted any special rights at the same time. Anglo-Indians obtained rights to preserve their own educational system and a privileged position in their access to some administrative (public service) positions. Sikhs and Muslims were not given any privileged position, pursuant to Art. 292: reservation post service, reservation posts in the Cabinets, creation of the administrative machinery to ensure adequate supervision and protection of the

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[26] A. Roy, *Mapping Citizenship in India*, Oxford 2010: p. 38.

[27] Scheduled Tribes and Scheduled Castes are recognises as per provisions of Art. 341(1) and 342(1) of the Indian Constitution. According to both legal norms, this is up to the President of the state to specify the castes, race and tribes or parts of the group which Indian constitution is granting some special provisions and guarantee state support, Chapter XI Special representation for the service of SC/ST, https://dopt.gov.in/sites/default/files/ch-11.pdf, visit: Auguste 17, 2019.

[28] A. Roy, *Mapping Citizenship in India*, Oxford 2010: pp. 98 -106

minority.[29] The Scheduled Tribes were in that time disregarded by the lawmakers and until 1989, when the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, was passed, and revised in 1995, when the new one was passed.[30] This leads us back to the statement made above that in order to secure its domination the dominant group in the Indian state had to fight against indigenous people interest and to deny their rights. The Indian state, built historically on the caste system, is still especially sensitive to such matters. The Assam incident proved that the state is not willing to accept diversity within its borders. However, the position of indigenous people, their internal strength, the ability to organise themselves and political implications of such group for the state's stability will usually lead to the following three scenarios: detachment of a particular territory form the mother state, recognition of some ethnic minorities' rights, and full assimilation of such group with some secured distinctive rights such as legal religious freedom. The first scenario has already happened and the third scenario is anticipated by the state and the state policy is aiming to achieve this goal. The second scenario, mostly anticipated by the ethnic minorities, is now denied by the state and the state is not willing to go into that direction.

A much different approach to the rights of indigenous peoples exists in the People's Republic of China, were philosophy of filial piety is dominant and also the state construction is different than India. The constitution of China effective since 1982, amended in 2004, contains an open catalogue of rights and freedoms granted to citizens and nations within territorial boundaries of the People's Republic of China. Chapter II includes provisions concerning human rights, such as the right to life, freedom, property ownership and the right to equality of the citizens of the People's Republic of China. This catalogue of rights and freedoms attributable to every

citizen of China. It means a rise in the importance of human rights, which presently constitute the foundation of the state, whereas earlier, through included in the constitution of 1952, were one of numerous principles of state functioning. The constitution distinguishes in Art. 33 the equality of all citizens towards law; Art. 4 includes the principle of equality of all nations; and Art. 5 states equality of every human being towards any other human being. Also, legislation recognised the equality of individuals and organizations, whereas Art. 48 of the constitution provides for the equality of women and men in access to political, cultural and economic spheres of life. Equality within the scope of political rights is also crucial.[31] On the other hand, Art. 34 includes the principle of political equality. It should be emphasised that the interpretation of the above-mentioned provisions is crucial, as since 2000, they have been understood not as the rights of townsmen or peasants (everyone is equal in their place of residence), but as rights independent from the place of residence, origin, race and religion.[32]

However, the People's Republic of China is not a homogenous country and is populated by about 56 recognized ethnic groups, including 44 enjoying limited autonomy granted by the state based on the filial piety traditional approach. Indigenous people in China are referred to as "autonomous

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  R. H. Retzlaff, 'The problem of communal minorities in the drafting of Indian Constitution', in R.N. Soann ed. *Constitutionalism in Asia*, New York 1963, pp. 71 -72.
[30] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, https://tribal.nic.in/actRules/SCST-Rules1995.pdf, visited: Auguste 17, 2019.

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  The aforementioned amendment to the Constitution related directly to the events of 2003, and specifically March 2003. On 17 March, in the city of Guangzhou, a 27–year-old Sun Zhigang, who stayed in an internet café after dark without his temporary residence card, was arrested by the local police. He was treated as an illegal immigrant. He died after a few days as a result of injuries he suffered as a result of brutal beatings in prison. Owing to an article published in the *South Metropolitan Daily,* the public opinion became interested in Sun's case and a national campaign began leading to punishment of those who caused Sun's death. One year later, the Chinese government decided to reform the constitution and detail the issues of human rights covered by the constitution. The government decided to depart from the traditional perception of the individual in the Chinese law "infected" with Confucianism as a dogma of superiority of shared rights over individual's rights; an individual should subject his/her rights and himself/herself to the common good. Mentality change and a wider access to "western" knowledge have enabled opening of the Chinese society to human rights. Q. Zhang, *The Constitution of China: a contextual analysis*, Oxford, 2012, pp. 70, 197 - 220.
[32]
  Q. Zhang, *The Constitution of China: a contextual Analysis*, Oxford 2012: p. 198

nations," which, on the basis of the declaration of the Peoples Liberation Army of October 1947, acquired the right to be joined freely to China. The state policy towards indigenous peoples was sanctioned in the same period, where, without opening a discussion on the right to national minorities' self-determination, limited rights to their own identity were guaranteed. The legislator cleared separated minorities from the predominant Han group and granted them rights not within one Chinese nation, where one group acquires certain privileges, but as an independent nation in one united states. The highest freedom and the right to decide were granted to the Han group, whereas other groups function on the basis of the Outline for Implementation of Nationality Regional Autonomy.[33] In consequence, five autonomous regions were created, having the right to self-governance (Art. 112), 140 autonomous areas, 31 autonomous prefectures and 104 autonomous municipalities. They have the right to regional self-governance, which includes, inter alia, the right to use, record and develop their own language, right to respect, preserve and practice own culture, traditions and customs.[34] Autonomous nations were also granted the right to have their own representative in the party and local bodies of state administration. They have also the right to run their own financial policy.[35]

Not all autonomous nations, however, have been granted the right to self-determination. The Tibetan minority was denied the rights which are most important for its identity, namely, the right to practice religion and freedom of religion. Despite significant weakening of the communist ideology, the government still desires to control strongly the beliefs of the population living on the Chinese territory, which, in reality, leads to an increasing aggression and separatist tendencies

among indigenous peoples. Introduction of the prohibition of religious freedom has led in Tibet to uncontrolled riots and growing separatist tendencies in this region, where the population their made an attempt at separating from the state. Zhang even stated that the lack of warranting the freedom of religion to indigenous peoples is a barrier to the unity of the Chinese state.[36]

In general terms, however, the China example shows that from the legal perspective, the state is able to accommodate ethnic minorities within its borders without actually losing the general power. Shifting the competence between the state and the organized minority will (in theory) allow the minorities to obtain minimum control over their members and to preserve their identity and cultural integrity. As has already been pointed out, the position of indigenous people within the Chinese borders depends on the state's interest in having such group, on the one hand, and the ability of such group to organise itself and the ability to assimilate some elements of the dominant tribe structure without losing their identity, on the other. When the state is not willing to recognize the rights of ethnic minorities, like in case of Tibet, it will lead to an internal conflict the final result of which will depend on many factors. What can be observed in the political structure of such state is that ethnic minorities and the state have decided to compromise: they have the right to express their self-determination, but within the frameworks of state structure created by the Han tribe. This mutual compromise is not supported by the state's willingness to recognize ethnic minorities' rights, but it relies on the state's necessity to safeguard its integrity and dominant Han tribe's position. It follows the tradition of filial piety, but in a limited way. The state is not fully interested in negating ethnic minorities' rights to self-determination, unlike in Bangladesh or India, where the state is seeing a greater risk in such recognition and is strong enough to suppress ethnic minorities' demands to recognize their rights. In case of China, also economic factors may

[33] introduced in 1952 and repeated in the constitution and the Law on National Regional Autonomy in 1984.
[34] The right includes also the obligation, on the part of the government, to guarantee them the right of access to the government administration and running court proceedings in their own local language.
[35] Q. Zhang, *The constitution of China: a contextual analysis*, Oxford, 2012, pp. 110 - 11.

[36] ibidem, pp. 240 - 242.

be beneficial, together with the tendency to secure integral and external power towards blocking the most dominant ethnic groups.

approach, it can lead to state de-stability and denial of indigenous peoples' rights.

4. Concluding Summary

Assessing the foregoing cases on the grounds of international law, we should recognise that a mere guarantee of the right to identity to indigenous peoples does not *de facto* lead to state destabilisation. Reasonable granting of those rights and guaranteeing respect for them will *de facto* not cause separatist movements. Recognition of that right on the international area will undoubtedly strengthen the position of indigenous peoples, but internal legal regulations could also prevent any movements which might disintegrate the state. The India example as the mixture of Western ideology and Gandhi philosophy, evidences that forcing assimilation or a full adaptation of the culture of dominant ethnic group can easily lead to internal conflict and state destabilisation. Disintegration is a process caused by an erroneous internal policy. The approach based on the filial piety looks in favour of the indigenous identity rights; however, it has its flaws, since it does not focus on indigenous people as a socially integrated entity but as an association of families. However, the filial piety philosophy accommodates indigenous people in the state as independent from the state body and secures their rights as well as their autonomy. Also, the *dharma* concept, with some modification, can secure the indigenous people's right to identity, as it eliminates the state administration's power over its subjects. The *dharma*, understood as the will of all people, leads to a non-violent state, in which the government represents an overwhelming majority of people,[37] however, it can still lead to the supremacy of a dominant group. This leads to the conclusion that the traditional approach to the state model based on the state Asian tradition and philosophy will, in some way, secure the state's stability and indigenous peoples' rights to self-determination. However, when it is mixed with the Western

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    A. Pasricha, *Rediscovering Gandhi vol 4: Consensual Democracy: Gandhi on state power and politics, Gandhian studies and peace research series*, Concept Publishing Company 2010: pp. 13.

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Germany's Rule of Law Interventions, Like those Elsewhere, Need to Follow the Laws, Principles and Measures that Germany and the International Community Claim to Promote

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Article Information

Abstract

This is a professional comment, and represents the views of the author.

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The German Government Foreign Ministry's (Auswärtiges Amt) recently issued a report (July 2019) on its plans for "Promoting the rule of law: a new strategy for the Federal Government" with the stated goals of "crisis prevention", "conflict management" and "peace building". It is filled with the standard sweet-sounding clichés, like "sustainability" and "doing no harm", which other governments and international organisations have routinely used — and in similar initiatives, over some five decades. Given that such previous initiatives have faced wide criticism, the German Government's recent statement is either grossly uninformed or deliberately irresponsible.

Indeed the German Government itself has already funded projects with this stated orientation, through international organisations and even some of its own agencies, with several decades of intervention into what is referred to as projects in the sector of RoL (Rule of Law), AoJ (Administration of Justice), and D/G/HR (in English) (Democracy/Governance/Human Rights). Germany has significant experience in participating in such interventions: in effect, they have supported what are the failures of the World Bank (of which Germany is a member) to follow international development and human rights law, and instead, have prioritised trade and short-term "growth". In place of rights and sustainability, the German Government has also supported similar failures within the United Nations system and also the EC (which Germany also funds) and in some of Germany's own initiatives (now expanding) through GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH) and the Max Planck Foundation, promoting legal advice and training. A central issue is that these agencies and their projects have avoided adhering to public measures of results or accountability, and the German Government seems to be continuing on the same path. The reality is that most of these projects, despite claims to the contrary, have been used to promote other, hidden, agendas. In this specific sector, funds can easily be directed to judges and foreign ministries in the hope of a more favorable outcome for a country's businesses or business sector. This can be to the exclusion of grassroots

democracy, civil society, human rights, and sustainability, particularly in terms of the survivability of the globe's minority cultures. In the very area of "rule of law" that, by definition, requires specific measures, accountability and citizen oversight, this new statement and plan is as empty as previous failures.

Public scrutiny of international interventions in this sector, like those the German Government is now expanding, has been sharply critical. And it is not new nor hidden, but dates back some four decades, starting in 1980 with an assessment of the U.S.A's activities in Latin America. Even then, one of the heads of the Ford Foundation referred to a list of standard projects in this sector as "legal imperialism." A more recent study refers to such projects as a form of illegal "plunder", promoting the rule of law in ways that are themselves in violation of international law. Critics reveal how decades of global projects in "legal development" are promoting globalisation as a new form of colonialism, in the name of rights but with little public oversight. The German Government shows no signs that it is learning from these failures. It has shown no signs that it will apply new forms of accountability and oversight that do exist to avoid similar problems.

One may have hopes for this initiative, but should also harbor no illusions concerning the potential underlying motives for this new strategy — given the deep dependence of the German economy on international trade and on international labor (both immigrants and foreign workers). There is also the direct conflict of interest of Germany's corporations with promoting local control, local cultural autonomy and sustainability of local resources, of individual rights and of oversight, overseas. The realities of several centuries of German history — with its recent and relatively shallow experience with the "rule of law" and the Enlightenment ideals of "social contract" and constitutionalism, its weak experience of federalism and a culture of public participation and government (bureaucratic "beamter" oversight) — all raise questions as to whether the German Government can offer anything special in this area. Germany's approach to unification in the Bismarck era (19th century), for example, is

still strongly reflected in German political and legal culture today. Germany's own domestic policies on the "Integration" of refugees, who hope for peace and a return to their homelands, and who generally wish to retain their traditions, are largely those of assimilation rather than full cultural co-existence or promotion of cultural sustainability and rights. Germany's past century of "unification" has also largely come at the expense of regional dialects and differences, as well as strong federalism and local sustainability. Further, the current "democratic" culture of Germany is characterised by little direct legal and citizen oversight of government and of industry or oversight of and participatory challenge to, a concentrated media. The German educational system and culture today largely patterns a political and legal outlook that is apolitical and disengaged, rather than one of direct citizen oversight and challenge to concentrated bureaucracies in their several spheres.

The specific categories that this recent plan chooses for its interventions are: "administrative strengthening", "parliamentary professionalisation", "decentralisation", an "independent judiciary" and "access to justice". These are the buzz words of the failed top-down approaches in international intervention in law and governance that reinforce the German legacy of the bureaucratic state, the undemocratic "beamter" mentality of the German Government, and similar approaches today of many international organisations. Some of the model projects proposed in this initiative will make unrepresentative "professional" judges further unaccountable, rather than increasing the role of the public (as jurors and judges). Or it will promote token representation rather than equal justice (equal access to lawyers, direct citizen oversight of bureaucracy, more public participation in lawmaking, and more public representation and participation in the judiciary).

While the German Government is claiming that it will act in this initiative to resolve international conflicts and to promote peace, the country has largely been the beneficiary of such conflicts, at least in terms of the flow of trained refugees to fill the country's economic needs. The German Government has done little to oppose the processes that have led to these conflicts (the impacts of globalisation and its pressures on land, resources and cultures, as well as global resource competition) and has been mostly silent over the international wars for resources, including the oil to fuel sales of German automobiles and machinery globally. Nor has the German Government offered legal protections for international whistleblowers who have exposed what is happening.

My observations as a practitioner working in this sector for more than 30 years on five continents, including some experience with German institutions and projects, is that governments and implementing agencies knowingly choose to avoid measurements, standards and oversight in violation of the very ideals of "law" and "good governments" and "rights" that they claim to be transferring. They use "rights" and "rule of law" as mere labels, to undermine cultural rights and sustainability in order to promote trade, favoring business rights over communities and labor, and directing funds to government offices (like judges) in ways that buy favoritism for their country's business interests. Much is directed to promote "stability" in ways that makes inequalities in political power more rigid and that makes injustice more efficient. When money is thrown at "human rights" and dialogue, it is too often little more than a public relations tool that funds organisations that either provide favors or who will have no impact.

Actors in this sector continually claim that there can be no real outputs because results are "too hard to measure" or "too long term". Slogans are used to claim "good intent" while the agreements by government officials to pass paper laws that are nothing more than paper, are used to claim "commitments". When measures are developed, they are usually little more than lists of project inputs or checklists of transplants of features of the legal system in the country of the donor that is being replicated in the recipient country without recognsing or correcting its inequities, inefficiencies, and other shortcomings. There is rarely any focus in these projects on long-term benefits, on real power balancing, effective citizen

oversight, protections of cultures, long-term sustainability, and fulfillment of the full set of human development needs and desires (spelled out under international law). This evasion and/or distortion of measures is an illusion that has been used to hide hidden agendas, corruption, and incompetence by those working in the sector, stemming from their own conflicts of interest.

If the German Government is being honest and professional, and if the German public wishes to achieve results that are consistent with international law and long term global interests, there are codifications of international development law that they can follow, as well as specific measures of "development", "sustainable development" and creating its context, as well as some specific measures of progress on human rights and human rights education.

There are also ways to improve the integrity of evaluation systems and to improve the ethics of those working to implement projects in this sector.

Countries of organisations engaging in legal development interventions must, themselves, be models of rule of law and open society in order to have legitimacy in this area. In 2020, I question whether that is the case in "Deutschland GmBH"/ "Germany, Inc." not only for the reasons above, but with this addendum on the inability to even have this debate in Germany, today.

There appear to be only two national outlets in Germany in which discussions such as this, on the German Government, can take place: the *Volkerrechtsblog: International Law & International Legal Thought* ("International Law Blog") of young legal scholars, directly under the funding of the Max Planck Institute for Public and Comparative Law, directly funded by the German Government (https://voelkerrechtsblog.org/), and the Global Public Policy Institute (GPPi) "*Peace Lab Blog*" (https://peacelab.blog/) that is directly funded by the German Government through the Auswärtiges Amt (the German Foreign Ministry). Both suppressed this debate, in both English and German, explaining directly that they sought to

protect the German Government from direct criticism and oversight.

I thank the editors of the *Journal of Law, Social Justice and Global Development* for allowing presentation of this view and hope this piece will not be unavailable in Germany, as many English publications outside of Germany now are as a result of recent Internet regulations supported by the German Government.

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