

# **Aesthetics and Human Rights**

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## **Abstract**

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

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

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

## **I. Introduction**

The question implicit in the title of this paper is, whether the value of aesthetics may be reduceable to the idea of a fundamental human right. The first difficulty that we have to confront is that the human rights instruments do not recognized a discrete category of value or right, which is to represent aesthetics. The closest we come to the recognition of such a right is in Universal Declaration of Human Rights (UDHR), Article 27.<sup>1</sup> Article 27(1) says that “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”<sup>2</sup> This statement brings in the term “arts” along with the term “scientific” and implies that the term “cultural” is inclusive of both, aesthetic expression as well as scientific innovation. In this sense, it may be that the concept is perhaps too wide to be given a coherent framework of justifiable boundaries within which aesthetic values can be clarified for the determination of the reach and scope of human rights protections. Article 27(2) says that “[e]veryone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”<sup>3</sup> Here again the concept of aesthetics implicates, not only the arts and the sciences but also the literary aspect of the arts. Moreover, these concepts are understood in terms of the moral and material interests that they may represent. This statement is also complex, open-ended and suggests that the idea of an aesthetic value as a human right needs further extrapolation and clarification in order to provide the basic protections that the culture of human rights might generate. In Article 15 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the recognition of the literary and artistic values is set in the context of the right of everyone to take part in cultural life.<sup>4</sup> This article includes scientific progress and its applications as an aspect of culture as well, stresses the protection of the interests generated by scientific, literary, and artistic production, the importance to this article of conservation, the development, and the diffusion of science and culture, and explicitly recognizes that freedom is indispensable to scientific research and creative activity.<sup>5</sup> We must effectively reconstruct, and develop this textual basis, if we consider that, there is a value in aesthetics that is fundamental to the experience of humanity, individually and culturally, and that this value challenges us to provide the strategies by which it is conserved, evolved, and shared, as a common individual and collective heritage of humanity.

## II. The Psychosocial Process of Aesthetic Experience

Oliver Wendell Holmes, a Justice of the U.S. Supreme Court, once indicated that “[a] word is not a crystal, transparent and unchanged, *it is the skin of a living thought* and may vary greatly in color and content according to the circumstances and the time in which it is used.”<sup>6</sup> In observing the conventional forms of creative expression, which trigger the interest of aesthetic appraisal, it is suggested that artistic and or musical expression may be the living expression of the creative aspect of generating beauty. The human rights dimensions of an aesthetic value are not simple or self-evident. In part, this is because of the difficulty of understanding the creativity that generates the artistic product, which is a contender for the designation “beauty” or “beautiful”. In part, the generation of such artistic creations is a psycho-socio process. With regard to the psycho aspect of creativity, aesthetic literature sometimes focuses on the idea that within the deeper recesses of the human personality are a vast repository of unconscious images, memories, and constructions of the imagination. Some individuals can tap into this deeply internalized psychological process and tap into this repository of creativity and distinctive uniqueness. This focus suggested that aesthetics are really appropriately studied in the context of the individual creative actor. This is a view that in its more conservative form stresses the idea that true art is “art for art’s sake”.<sup>7</sup> This would imply that artistic work is insulated from external influences and, as one theorist have put it, “its value and meaning must attach to the *surface* constituents and *surface* structure of the work as grasped in *immediate* content”.<sup>8</sup> In this sense, aesthetics do not rely for their truth on real world relations. They have to be judged and appreciated only in their surface import, and in their fitness, congruity, or appropriateness within the work as a whole.<sup>9</sup>

An alternative view, which in effect is a rejection of this isolationist view and which rejects the idea that art is completely separate and distinct from the rest of life, is the view that the meaning of art and aesthetics is to be elucidated contextually. In this view, there is an integral and critical relationship between art and life. According to Don John Dewey, “art is the living and concrete proof that man is capable of restoring consciously, and thus on the plane of meaning, the union of sense, need, impulse and action, characteristic of a life creature. Andre Malraux expressed a complementary view as follows, “all art is a means of possessing our destiny. And the cultural heritage does not consist in works of art that man should respect but rather in works of art that help them to live.”<sup>10</sup>

The isolationist view, as applied to the artists, brings in the element of individuation. The artist as individual may be a natural outsider. He may be a person shut up or bound in its own private world of imagination, idiocentricity and indeed eccentricity. Images of the artist are that the insulation from society generates the impractical dreamer whose artistic expression contains its own self-fulfilling justification. From the contextual perspective, the life given to art is generated by interpretation, which is itself a social activity. Interpretation may well show that an artist’s works is within a historical chain of culturally transmitted traditions and the artist would not be an artist if those traditions did not exist. In short, without those traditions the artist would not be relevant. What we shall try to do in this paper is to bridge the divide between the isolationist and the contextualist using the tools and insights generated by the culture of human rights.

Artistic creativity, as we have seen, is an individual product generated by highly individualized subjectivities, unique to the personality of the artist. The creative process is therefore, individuated and highly personalized. There is a great deal of truth in this, but it is an incomplete

truth. This truth must be supplemented by the idea that art is not produced in a vacuum. Some of the value, meaning, and appreciation of art are rooted in the contextual reality within which it is transmitted to the relevant target audience. It may be that the real meaning of aesthetics requires the triggering of an artistic product by personality, but its durability, as an artistic product, to be culturally valued, rest on a social construction of ideal forms and ideal representations of “beauty” and the “beautiful”.<sup>11</sup> In short, contextuality is only relevant to aesthetics if personality generates art. What is commonly regarded as a culturally acceptable contribution of form and beauty would seem to require an inter-stimulation of personality, individuation, and culture context.<sup>12</sup>

These thoughts must of course be placed in the context of the most basic, accepted, and indeed recognized, human rights values. The important characteristic of the values abstracted from modern human rights is that the values may be socially constructed and understood when we identify the institutional forms, globally and cross-culturally, that are, in some degree, specialized to the promotion and defense of these values. Thus, the fundamental values of human rights are paired with the dominant institutional forms that give them contextual meaning. For example, power would institutionally be represented by the institutions of governance; wealth by wealth generating institutions, such as corporations, partnerships, etc; education and enlightenment by education-generating institutions, such as schools and universities; well-being by health institutions, such as hospitals and clinics; skill by skill-based institutions, such as labor unions and professional organizations; affection by micro-social and macro-social institutions that generate positive sentiment, such as the family and friendships and by those based on loyalty and patriotism; respect by the institutions that defined social class or are based on prestige; and rectitude by institutions based on spirituality and rightness such as churches, temples and courts.<sup>13</sup>

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

general, is a method of communicating sign, symbol, and emotion. The critical question then is; is there a general model of communications that is appropriate to the art-aesthetic process.

General communications theory stipulates that the artist, or the aesthetic appraiser, is in effect, the players identified as the “WHO” in the communications process.<sup>14</sup> The questions that emerge are: what protections can human rights provide to these communicators and what is the importance of the freedom to communicate in the social processes of the aesthetic value; what is communicated by either the artist or the aesthetic appraiser? Additionally, we may ask, at which point does art become vulgarized by commerce, by political propaganda, or depreciated by censorship or punishment; through what channel? These questions focus on the rights of access to the specialized channels through which artistic expression is directed. Here again, the questions may well be, are the channels adequate; may they be improved; how and by whom; how inclusive or exclusive are the channels relevant to artistic expression? The next questions refer to the target audience: what is filtered, suppressed, or modified so that the target audience does not have access to the artistic product? Finally, the basic question would be: what are the results, effects, and appraisals of the aesthetic quality of the production and distribution of artistic products?

Thus far, we have provided a general orientation to the relationship between basic human rights values, human institutions, personality dynamics, and aesthetics. The central insight here is that aesthetics is implicated in the dynamic relationship of personality and culture. This is an essential focus if we are to understand aesthetics as a personality/social process and its human rights dimensions in terms of problems and human rights preferred solutions. The focus on personality and culture implicates an aspect of art that has its focus on understanding “opposites” in aesthetic processes.<sup>15</sup> Art itself frequently emerges as a contribution to the integration and reconciliation of opposites as it reproduces artistic outcomes in a unique psychological state, which includes artists/creator, other stakeholders, and participants in the experience of art.<sup>16</sup> Early philosophers described this phenomenon as an indication of catharsis; the apparent conflict implicated in opposites results in a purge of internal emotional turmoil, reflected in arts capacity for emotional integration and reconciliation.<sup>17</sup> Freud’s description of art has an affinity with this idea.<sup>18</sup> From Freud’s perspective, art is a function of an inter-determinant personality process between the conscious and the unconscious.<sup>19</sup> For example, a dream may be a product of the unconscious. That dream, when inserted into waking consciousness may emerge as art. The psychoanalytical literature has been especially rich in developing these themes.<sup>20</sup> These developments retain the fundamental insight of Freud. It confirms his view and explores the more precise causes generating the link between the unconscious and ego-consciousness. This appears to clarify the idea that creative form, which emerges largely from the unconscious, is given meaning by ego-consciousness. Moreover, the complex of emotions, dimly form signs and symbols, and possibly confusing images that emerges from the unconscious, is, via the processes of conscious interpretation, given meaning and thus, is a component of a comprehensive aesthetics theory.<sup>21</sup> From a human rights perspective, what emerges from the unconscious is pregnant with value-questions and value-concerns. These concerns confront ego and in a larger sense will confront the community of specialists and the larger community of stakeholders. This suggests that the conceptualization of the inter-determination of personality and culture are important guidelines for guiding inquiry in this context.

With these very general descriptions, we move the discourse into the complex and treacherous terrain of the specialists in aesthetics. Of the rich variety of candidates to focus on, we chose to focus on Walter Pater, a Brasenose College Oxford Don who established a distinctive reputation as a leading aesthete and scholar in the late 19<sup>th</sup> century context of the University of Oxford.<sup>22</sup> Pater, although a highly respected figure, never received a chair in the University of Oxford. It is possible that although he was highly respected, he was not destined to be given a chair, which on purely academic grounds would have been thoroughly justified. There were always questions in the highest circles of Oxford about the possible undesirability of a chair-holder having an alternate possible gender orientation. In a sense, this made him something of an outsider, persecuted, perhaps for his orientation, but also for the implication his orientation might hold for his professional work. Pater's work was complex in the sense that he was a critic, an appraiser, and an artistic contributor, and his gender orientation may have generated an outsider's view of possible unfair discrimination. He was also identified with the notion that creative art is not a confirmation of the humdrum past, which reifies convention. He seems rather to be cast in the role of a fighter confronting and trying to defeat reactionary cultural forces. One of the difficulties of using Pater, as an anchor of aesthetics, as a discipline, is that, as a critic, he could consistently produced disturbing and far-reaching insights. It is not easy to cabin his work in doctrinal bright lines. To illustrate, Pater once said, "[a]ll art aspires to the condition of music".<sup>23</sup> In this sense, Pater's insight, that the condition of music was the only art in which the subject and the form were indistinguishable suggests that other forms of art could only aspire to this condition.

Two themes appear to influence Walter Pater as an aesthete. The first is the idea that social and biological processes are in constant movement.<sup>24</sup> If art freezes a knife-edge instant of this flux, it only suggests that stability is an exception, and the flux of instability may be the rule.<sup>25</sup> It is in this context that personality, in the creative process, makes its contribution. Here, Pater's precocious insight, which appears to anticipate Freud, is that the unconscious (mind) is a "whirlpool" that is also in rapid motion. It is a flow with identifiable elements, emotions, memories, perceptions, impressions, which are often inconstant flickering and unstable and which are cabined in "that thick wall of personality".<sup>26</sup> Pater recognizes that many of these elements often dissolved themselves; they vanished in a strange movement that weaves and unweaves in the mind where external reality and the mind are in continual flux.<sup>27</sup> The challenge for the artist and the discriminating aesthete is to learn the technique of "sharp and eager observation": "every moment some form grows perfect in hand or face; some tone on the hills or the sea is choicer than the rest; some mood of passion or insight or intellectual excitement is irresistibly real and attracted for us, - for that moment only".<sup>28</sup> The creative expression involves the skill to observe "as many pulsations as possible into a given time": "to burn always with this hard gemlike flame, to maintain this ecstasy, is success in life".<sup>29</sup> The alternative is functioning according to habit and reified tradition. Pater saw the danger in conventional stereotypical conformity:

"While all melts under our feet..." "we may well catch at any exquisite passion, or any contribution to knowledge that seems by a lifted horizon to set the spirit free for a moment, or any stirring of the senses, or work of the artist's hands. Not to discriminate every moment some passionate attitude in those about us in the brilliancy of their gifts is, on this short day of frost and sun, to sleep before evening." The resulting "quickened, multiplied consciousness" counters our insecurity in the face of the flux.<sup>30</sup>

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

“[a] sudden light transfigures a trivial thing, a weathervane, a windmill, a winnowing flail, the dust in the barn door; a moment – and the thing has vanished, because it was pure effect; but it leaves a relish behind it, a longing that the accident may happen again.”<sup>31</sup>

A visionary moment may also merge from intellectual stimulation in science, philosophy or the arts. Here, Pater suggested that we should “be forever testing new opinions, never acquiescing in a facile orthodoxy” and the emotional drive for the arts, which implicates “a desire of beauty”, has “the greatest potential for staving off the sense of transience, because in the arts the perceptions of highly sensitive minds are already ordered; we are confronted with a reality already refined and we are able to reach the personality behind the work”.<sup>32</sup>

### a. Art, Form and Interpretation

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

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



“Hers is the head upon which all “the ends of the world are come”, and the eyelids are a little weary. It is a beauty wrought out from within upon the flesh, the deposit, little cell by cell, of strange thoughts and fantastic reveries and exquisite passions. Set it for a moment beside one of those white Greek goddesses or beautiful women of antiquity, and how would they be troubled by this beauty, into which the soul with all its maladies has passed? She is older than the rocks among which she sits; like the vampire, she has been dead many times, and learned the secrets of the grave; and has been a diver in deep seas, and keeps their fallen day about her; and trafficked for strange webs with Eastern merchants: and, as Leda, was the mother of Helen of Troy, and, as Saint Anne, the mother of Mary; and all this has been to her but as the sound of lyres and flutes, and lives only in the delicacy with which it has moulded the changing lineaments, and tinged the eyelids and the hands.” – Walter Pater's Mona Lisa<sup>33</sup>

Walter Pater's exploration of human subjectivity, as essential for an understanding of the creative process, is in many ways a post-modernist insight. Moreover, it is possible to read into



Pater the particular importance of the individual in the construction of beauty.<sup>34</sup> This seems to imply, at least, that some credence must be given to the moment in the flux of mind and environment, which is captured by art as an enduring monument to beauty.<sup>35</sup> In this sense, Pater sees on the continuum that moves from personality to culture, as at least, a leaning on the side of personality in its importance. On the other hand, his insistence on the autonomy of the specialist appraiser has a leaning toward culture, but in a manner that is filtered by the unique craft skills perceptual, intellectual, and creative empathy of the appraiser. This qualification, rooting the foundations of aesthetics in terms of personality, appraiser, and culture, represents a more complete formulation of its outer boundaries.

It would be appropriate to deepen the consideration of Pater's foundation of aesthetic experience by drawing in insights from philosophy. Philosophers recognize that the isolationist perspective of the artist focuses on an important condition of creativity.<sup>36</sup> That condition is in effect the uniqueness or essence of the art. The uniqueness distinguishes art from other human action. The contextualist aspect of aesthetics seeks to connect art to the broader framework of human experience and human values.<sup>37</sup> In this sense, human rights aspects of aesthetics are certainly important for the connection of art to the basic human values of social life. Philosophers maintain that both these perspectives are crucial to an understanding of aesthetics.<sup>38</sup> In effect, art integrates the unique and the generic, the isolated and contextual. The unique aspect of art is located in the specific image "in its creation, contemplation, and intrinsic content".<sup>39</sup> The artistic image in this sense captures the attention because it is clear, made vivid, only when seen in isolation. In short, the image requires a certain moment in the flux (Pater's idea) of mind and experience in which the image removed from that flux is isolated and made vivid. The next is the triggering of context to give it meaning via interpretation. The effect of meaning is essentially to connect the vivid representation to the larger target audience. In this sense, art integrates the image and meaning. The image is normally explicit; the meaning has to be teased out of the image. Meaning has generic features, which implicate generic values, and connects art to those values.<sup>40</sup> One distinguished philosopher building on this model states that by art is meant:

"the expression of values: the deepening and clarifying of intrinsic values by imaginative expression. The values expressed in a work of art, moreover, are partly unique, and, as unique, they do not even exist until they are expressed; but they also fall within a genus, and thus have a universal character. Artistic expression means the creation of a *specific* variant of some *generic* value. The specificity is the basis of the isolationist theory, the generality is the basis of the contextualist theory."<sup>41</sup>

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

"Experience of this sort, in which values are inextricably fused with specific qualities, is characteristic of all life in its presentational immediacy, before analysis has done its work of dividing and abstracting. Esthetic experience is experience *at this level*. The artist creates a work of art which transmits this sort of experience."<sup>42</sup>

A work of art may represent important subliminal values that express and excite the interest of the artist. These values are put in the form of a concrete image. That image may be a way of grounding important values or enhancing and deepening our understanding of those values. In this sense, art and beauty capture the foundations of ethical experience in terms of the interplay

of personality, values, and culture. In our view, these philosophical perspectives, which clarify the value cultural context of art, provide an important place for the aesthetic process in the clarification and grounding of human rights values.

It would be of some value to provide some representative illustrations of artistic image and its contextual relevance in the context of the fundamental values of social organization. Below we reproduce a painting produced by Pablo Picasso immediately upon hearing of the bombing of an undefended city by allies of the fascist dictator, Francisco Franco:

**Figure 2: Guernica by Pablo Picasso**



This painting is about the aerial bombing of the city of Guernica.<sup>43</sup> The representation of the event is not done in a form of literal artistic expression, is done in the form of symbols and the form of the art really has these symbols falling over each other to represent the chaos and the anarchy of the emotional experience on the ground. Most riveting are the images given prominence of two animals, namely the horse and the bull. In effect, it is meant to represent the complete incomprehension of the horse as it experiences the epitome of terror and the bull, standing over the grieving women and the dead child, is in effect a dumb witness to the atrocity, but like the horse, without a comprehension of modern war. Picasso's own comments on this are interesting;

“...this bull is a bull and this horse is a horse... If you give a meaning to certain things in my paintings it may be very true, but it is not my idea to give this meaning. What ideas and conclusions you have got I obtained too, but instinctively, unconsciously. I make the painting for the painting. I paint the objects for what they are.”<sup>44</sup>

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

“The Spanish struggle is the fight of reaction against the people, against freedom. My whole life as an artist has been nothing more than a continuous struggle against reaction

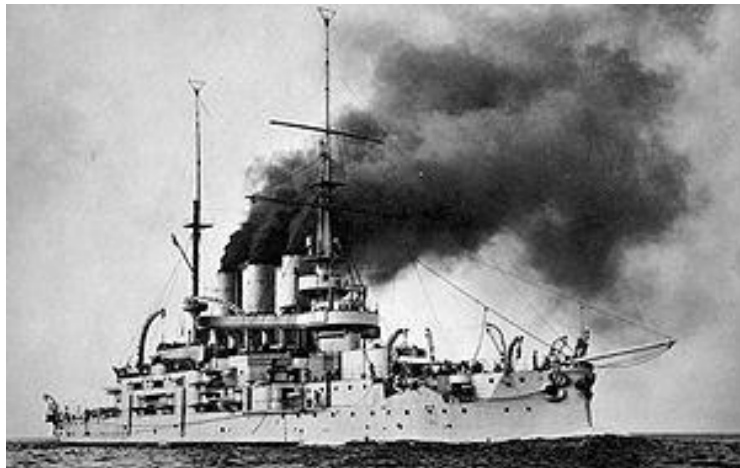
and the death of art. How could anybody think for a moment that I could be in agreement with reaction and death? ... In the panel on which I am working, which I shall call Guernica, and in all my recent works of art, I clearly express my abhorrence of the military caste which has sunk Spain in an ocean of pain and death.”<sup>45</sup>

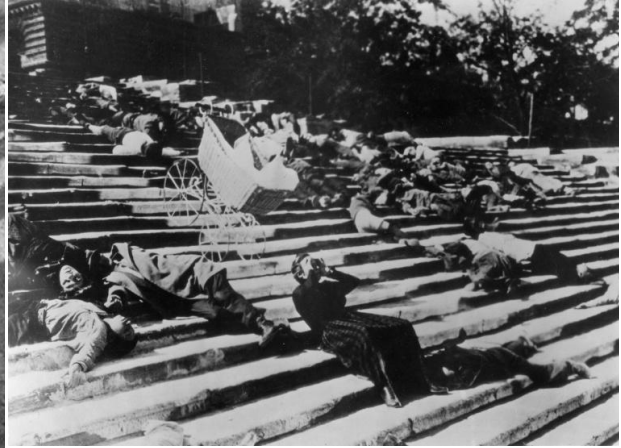
Human beings may understand terror, even if they do not like it; but the horse, is sheer terror. This represents the way in which terror can be inflicted in a mechanistic way and one which assumes a complete blindness about the destructiveness of mechanistic aerial warfare targeting everything within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

### b. High Art in Films and its Human Rights Values

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

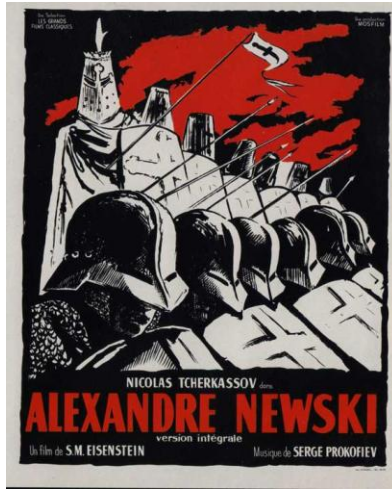
**Figure 3: Battleship Potemkin**





Eisenstein made *Battleship Potemkin* in 1925. It represented the 1905 mutiny on board the battleship *Potemkin*.<sup>46</sup> The mutiny coincided with strikes, protests and resistance marches to Tsarist regime. Eisenstein weaves the pictorial narrative to include the people's participation in protest and resistance. The film does not contain any particular individual hero or heroine. The illustrations of terror and suffering are effectually representations of collective loss and suffering. This film succeeds in making "the people" the hero. Heroism is in effect a collective people's effort in its forms of resistance and collective courage. The film also symbolizes the critical role of the armed forces as a potential resource for revolutionary activism. From the point of view of values, the role of the state and its indifference is reflected in the manner in which the sailors in the armed forces are treated. A triggering matter is the issue of feeding the crew meat infected with maggots. The film then represents the idea of proactive resistance to injustice. The fact that the crew has the support of the civil community in Odessa is an important indicator of people's expectations about elementary justice. The role of the state in overreacting and being ruthless and indiscriminate in its repression is an example of the states' valuation of negative values. This reminds us of Syria today.

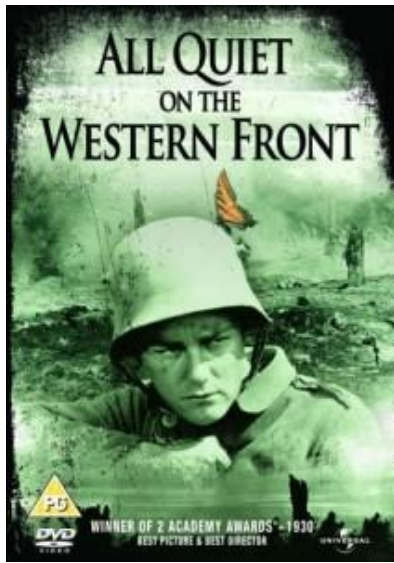
**Figure 4: Alexander Nevsky**



Eisenstein made this historical movie, *Alexander Nevsky*, in 1938.<sup>47</sup> It was a work of art and a work of patriotism. What is remarkable in this film is the way in which Eisenstein depicts the imperialistic invading Teutonic knights. When images of the knights are set in motion and accompanied by Sergei Prokofiev's music the image has an unmistakable resonance with modern mechanized warfare in terms of both image and motion. Here modern mechanized warfare means invasion led by tanks or panzer armies. The Teutonic knights covered as they are in steel helmets are almost like the invading tank armies that in 1941 invaded the Soviet Union. The values are clearly the values that repudiate imperialism and support the values of patriotic resistance to imperial conquest.



Figure 5: All Quiet on the Western Front





The film, *All Quiet on the Western Front*, was a major achievement in the art of the cinema. It is a film that is superior to the book upon which it is based.<sup>48</sup> The story begins with our hero, Paul Bauman, in high school, persuaded to volunteer to serve in the armed forces of Germany. After training, he and his classmates are sent to the front where the experience of war and death are far from the propaganda of the stay at home professionals and intellectuals. It is a complete and utterly independent reality. In the first picture we see the professor who is the biggest war recruiter of Cannon Fodder. He has absolutely no idea of what life is on the front. Below the professor is the former postmaster, a lower class arrogant German who gets class revenge on the young recruits and who it turns out is a coward. The two pictures on the last are depictions of life and action in the trenches. The genius of the film is the technical way it can bring the reality of battle experience home to the audience in an art form. The visual innovations of the film required the director to attempt to give a visual and riveting form to the actual combatants. To achieve this cinematically the artists used a charcoal mixture, spread over the film, which could graphically accentuate the form of the figures as they went over the top in attack and retreat to the trenches in defense. The picture below is a graphic illustration of a soldier killed, in no man's land, clinging to barbed wire. The pictures captures the types of bonding that can only happens in war among different classes of man. The picture on the right shows a veteran from the lower classes bonding with the young hero Paul. Killing on a personalized basis is a complex emotional experience; in the picture on the left, the hero has killed a French soldier and he finds in the French soldiers' personal effects a picture of his child and his wife. For a moment, the idea that the Frenchman is an enemy is destroyed. The soldier in the field finds compassionate identity and remorse. The enemy is simply a common man. The final picture is a picture of the young men who went to war in the beginning and died. There is a background of crosses symbolizing the price of conflict. In some measure, art has to capture as Pater put it, that knife-edge instant in the flux of time and mind. It is impossible to feel the emotionalized behaviors of actual battlers synthetically. It is rare, indeed, for a film to capture the complexity of the emotionalized dynamics in the context of action, death, and dying. This film has being held as the ultimate artistic expression of the antipathy to war, and an assertion of its futility.

### **III. Human Rights Law and the Protection of Art and Aesthetic Values**

Aesthetic values, in the context of human rights law, come in texts that seek to protect the cultural patrimony of a community. Consequently, there have been developments that are focused, in part, on the protection of folklore and culture of indigenous communities. However,

these developments may have general applicability as a touchstone to further developments in human rights law. It would be useful to begin our analysis with reference to both Article 27 of the UDHR<sup>49</sup> and Article 15 of the ICESCR.<sup>50</sup> Both of these human rights standards connect art to the concept of culture. The initial problem that we confront with trying to give a specific meaning to culture is that the meaning may be over or under inclusive. We start with the effort to develop a clarified meaning of art and culture by examining the international effort to prescribe standards for the international safeguarding of the intangible cultural heritage (ICH). In the 1970's the international community began to consider the idea of expanding the meaning of culture beyond the reference to tangible products. The implications of this were that culture implicated spiritual values, which could be seen as an aspect of art as well. The perspectives of various stakeholders from Africa, Asia, and Latin America added to this discourse the idea that culture including the intangible aspect of it was essentially a manner of accounting for living tradition.<sup>51</sup> These discourses led to the Mexico City Declaration on Cultural Policies (1982), which provided a comprehensive and holistic explanation of culture.

“The whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs.”<sup>52</sup>

Cultural tradition is therefore, a peoples' cultural inheritance. This inheritance includes “both tangible and intangible works through which the creativity of that people finds expression: languages, rites, beliefs, historic places and monuments, literature, works or art, archives and libraries.”<sup>53</sup> The sum total of creation based on tradition, it was, subsequently recognized, reflected co-expectations in the community and were a critical cluster of symbols of community solidarity and correspondingly of community identity.<sup>54</sup> In 1989, the UNESCO General Conference adopted a specific international legal instrument on the ICH. This was the Recommendation on the Safeguarding of Traditional Culture and Folklore (RSTCF).<sup>55</sup> The RSTCF articulated principles for facilitating conservation, preservation, distribution, and the legal protection of folklore. ICH remained on UNESCO's agenda and was subject to further action on the part of UNESCO. Further action included, inter alia, an initiative under the title, Living Human Treasures.<sup>56</sup> This initiative focused on states to grant official recognition of uniquely talented tradition transmitters of arts and crafts. These transmitters were to be identified as having an elevated level of knowledge and skill for the creation of ICH. The program was also designed to stimulate the transmission of such knowledge and skills to the younger generation.

In 1996, important insights were generated in the Report of the World Commission on Cultural Development.<sup>57</sup> Among the insights was the challenge that only elitist contributions would be given preference. In short, there was a concern that art and culture be more democratic and more inclusive:

“[d]evelopments presents new challenges for heritage conservation. Not only is there a huge gap between means ad ends but our definitions are still too narrow. They are biased towards the elite, the monumental, the literate and the ceremonial. There is a need to reassess such conceptions as well as to develop better methods of identifying and interpreting our heritage. It is essential to understand the values and aspirations that drove



its makers, without which an object is torn from its context and cannot be given its proper meaning. The tangible can only be interpreted through the intangible.”<sup>58</sup>

In 1997, the UNESCO General Conference adopted a resolution to underscore the importance of ICH for peoples and nations. The Resolution essentially required proclaiming forms of cultural expression as recognized as part of “the oral heritage of humanity”.<sup>59</sup> The UNESCO Executive Board also launched in 1998 The Program for the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity.<sup>60</sup> The primary objective of this initiative was to identify and recognize the most outstanding expressions of ICH. The process envisioned nominations by member states of UNESCO. It provided a wider definition of ICH:

“[t]he oral and intangible heritage has gained international recognition as a vital factor in cultural identity, promotion of creativity and the preservation of cultural diversity. It plays an essential role in national and international development, tolerance and harmonious interaction between cultures. In an era of globalization, many forms of this cultural heritage are in danger of disappearing, threatened by cultural standardization, armed conflict, the harmful consequences of mass tourism, industrialization, rural exodus, migration and environmental deterioration.”<sup>61</sup>

The masterpieces project, which required an appraisal of outstanding value, required criteria of appraisal, which would appear to be at least implicitly informed by the intellectual culture of aesthetic appraisal. These works have to be considered masterpieces of human genius and of enduring value. There is ongoing research about the nature of ICH and the problems of characterizing its intrinsic and durable value. Some of these issues capture the tension between the subjective creative orientation and the more objective appraiser evaluator role. These are matters that continued to be discussed, and developed, in UNESCO circles.

The specific connection of ICH to human rights is that the protection of cultural rights is also connected, in this instance, with religious or confessional beliefs. Thus, the right to freedom of thought, conscience and religion (Article 18 of the UDHR and Article 18 of the International Covenant on Civil and Political Rights (ICCPR)<sup>62</sup>) are implicated. The Human Rights Committee (HRC) comment on Article 18 clarifies;

“[t]he freedom to manifest religion or belief in worship, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as *various practices integral to such acts*, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.”<sup>63</sup>

The scope of cultural rights, which implicate religion, also falls within the compass of Article 27 of the ICCPR. Article 27 stipulates “in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own

religion or to use their own language.”<sup>64</sup> The HRC has clarified Article 27 suggesting that “positive measures by states may... be necessary to protect” the minorities’ enjoyment of cultural rights.<sup>65</sup> Article 27 is reproduced in Article 30 of the International Convention on the Rights of the Child (ICRC), which requires education to enhance the cultural identity, language, and values of the child from which community it emerges.

We now shift our analysis from ICH to the concept of culture, conventionally used. This requires as well that we examine artistic values from the perspective of Article 15(I)(A) of the ICESCR.<sup>66</sup> In this treaty, states recognized the right of everyone to take part in cultural life, which includes art. Scholars have identified at least three overlapping concepts of culture. These are as follows;

1. “culture” in the classic highbrow sense, meaning the traditional canon of art, literature, music, theater, architecture, and so on;
2. “culture” in a more pluralist sense, meaning all those products and manifestations of creative and expressive drives, a definition which encompasses not only “high” culture but also more mass phenomena such as commercial television and radio, the popular press, contemporary and folk music, handicrafts and organized sports; and
3. “culture” in the anthropological sense, meaning not simply the products or artefacts of creativity and expression (as envisaged by the first two definitions) but, rather, a society’s underlying and characteristic pattern of thought – its “way of life” – from which these and all social manifestations spring.<sup>67</sup>

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

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

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

“culture is not merely an accumulation of works and knowledge which and elite produces, collects and conserves in order to place it within the reach of all...<sup>68</sup> [Rather], the concept of culture has been broadened to include all forms of creativity and expression of groups or individuals.”<sup>69</sup>

The issue of human rights and the popularization of culture have been an important part of the agenda and discourse of the Committee on Economic, Social, and Cultural Rights (CESCR) as well, which is also inclined to a less elitist approach to culture and art.<sup>70</sup> The activity of UNESCO and the CESCR has slowly grounded the principle that the human right to take part in cultural life is established. The critical question remains, what precisely the scope of this right is as an international standard of global reach. We conclude this paper by reference to other areas in which parallel developments had occurred in the context of international human rights law. First, it has been the practice to now recognize that there is a category of culture that is described as traditional knowledge.<sup>71</sup> Traditional knowledge implicates science and the arts. In both of these areas, traditional knowledge also implicates intellectual property.<sup>72</sup> In the context of arts, it would be the question of the appropriation of forms of art for which at least in theory there would be a copyright pecuniary interest. With regard to traditional knowledge in areas of plants and genetic resources, the question would be, whether these are forms of intellectual property that should be protected under World Intellectual Trade Organization (WIPO) and the TRIPS agreement.<sup>73</sup> If, as is now the case, there are not covered by a reading of these instruments, should these instruments be revised to ensure that the economic rights of the originators of this knowledge is given a degree of protection in these specialists regimes. The specific human rights instruments of relevance are Article 15(A) and 15(C) ICESCR and Article 27 ICCPR. In addition, there are a number of international instruments and institutions that implicate the property aspect of cultural and intellectual property, at least of indigenous people. These include, the United Nations Environmental Program, the Convention on Biodiversity, the Food and Agricultural Organization of the United Nations, the United Nations Working Group on Indigenous Populations, UNESCO, the International Labor Organization, the World Health Organization, the United Nations Conference on Trade and Development, the World Trade Organization, the United Nations Development Program, Open-Ended Ad Hoc, Intergovernmental Panel on Forests, and the WIPO. This suggests that the fullest exploration of the idea of an aesthetic value sustained by human rights requires a great deal more working effort in a wide range of contexts and institutions before we can complete the story.

#### **IV. Human Rights Values and the Art/Aesthetic Process**

In the introduction to this paper, we suggested that the model of communications theory may facilitate our appreciation of the human rights dimensions of aesthetics as a human rights value. The model poses a series of questions, each of which directs us to issues of normative importance. For example, we initiate a consideration of the model with the question of who the communicators are. Here, the focus on who the communicators are implicates a clarification of the important stakeholders and the questions of the right to participate in the creation, appraisal, and distribution of art and aesthetics. Since art and aesthetics are integral to communication a further critical question would be, through what channels are art and aesthetics communicated. This raises the question of access to the channels, restraints on access to the channels, the nature and extend of the channel, as a communications device, and the normative implications of distribution via a channel. The communication will also target an audience, and the question then

becomes, what right of access does the target audience has to the art an aesthetics that have been communicated by the communicators, through distinctive channels, to the larger target audience. Finally, it would be appropriate to understand the effects of art and aesthetic communication on the target audience and its influence on other values of social importance to the community. From this initial model we can then look at the way in which the other values that are implicated in human rights have an influence on the idea of the human rights implicated aesthetic values.

### **A. Rectitude and Aesthetics**

We start with the human right value of rectitude.<sup>74</sup> Article 18 of the UDHR stipulates that “everyone has the right to freedom of thought, conscience and religion”.<sup>75</sup> We stress this because thought and conscience and or religious orientation are frequently fertilized in the unconscious process of the artist and aesthete. In this sense, this is a freedom that is absolutely indispensable to the element of creativity which may be expressed ultimately as art, beauty, and artistic experience. It is therefore so fundamental to the idea of being human, that it is impossible to imagine human creativity happening if this freedom is destroyed or disparaged. In this sense, the freedom of conscience and thought is the characteristic that distinguishes humanity and therefore it connects art and aestheticism as a foundation of individual and collective coexistence. This freedom may also be joined with the freedom expressed in Article 19 of the UDHR. Article 19 states that “everyone has a right to freedom of opinion and expression”.<sup>76</sup> This includes the right to received and impart information and ideas through any channel regardless of boundaries. These two articles provide a central normative guideline for the communications theory approach outlined above.

### **B. Power and Aesthetics**

We now come to the human rights values implicated in the value of power.<sup>77</sup> The text of the UDHR lists the following articles as implicated in the human rights dimensions of power: Articles 7, 8, 9, 10, 11, 13, 14, 15, and 21.<sup>78</sup> The issues, which implicate artistic creativity and aesthetics, involve the use of power to sustain or undermine participation on these processes. Additionally, artists and aesthetes, individually, do not represent significant social power. They therefore require association of freedoms to support their, often misunderstood, contributions to culture. Central to the issue of power and aesthetics is the importance of the individual perspectives of the participators. These perspectives require the capacity of the participants to discover and develop latent artistic and aesthetics capabilities. These, therefore, implicates the right to acquire and use artistic capability. The freedom of movement may be a vital right for the artist and aesthete, to experience and share these values cross-culturally and globally. The institutional forms of artistic association or aesthetic community remain small and fragmented but the institutionalization of peer groups are a critical power dimension for the protection of the integrity of artistic creativity and aesthetic appreciation. When the creative arts are under siege, it is important for artists and aesthetes to mobilize other values as basis of power in the defense of artistic integrity. This requires artists and aesthetes to be sensitive to the strategic value of creativity and aesthetic appraisal in order to generate non-coercive limits on the possibility that their work will be repressed. A central aspect of the relationship of power to art and aesthetics is the ability of aesthetics and art to carve out a zone of civic order as an aspect of a recognized domain of civil society. The importance of this zone of civic society is that it serves as a

structural limitation on the power of the state to censor, repress, and victimize the stakeholders in the artistic and aesthetic community.

### **C. Enlightenment and Aesthetics**

Another important value of central importance to art and aesthetics is the human rights value of enlightenment.<sup>79</sup> Enlightenment is textually implicated in Articles 19, 22, 26 and 27 of the UDHR.<sup>80</sup> One of the most foundational contributions that art and aesthetics make to the human prospect is that it illuminates the deepest structure of human value and human experience in a form that is universalistic and represents a memorial to endurance. In this sense, art and aesthetics states a critical claim to its outcomes, which contribute to optimizing the shaping and the sharing of enlightenment. This, therefore, represents an important value relating to participating in both the generation and receipt of enlightenment. The universalistic nature of this kind of contribution would therefore oppose restrictions based on invidious discriminations based on race, religion, gender orientation, lineage, etc. The perspectives of enlightenment provide an additional justification for creative art and its aesthetics appreciation. In the context of social practice there is an attractive connection between the institutions of education and enlightenment and the processes of art and aesthetics. However, there are institutions outside of formal education that are important to the generation of enlightenment as well. It is important that when artists and aesthetes consider threats to enlightenment, they are able to mobilize other value institutional processes to defend the enlightenment function of art and aesthetics. Finally, the strategies of enlightenment in the context of art and aesthetics give great importance to all forms of communication that are relevant to the promotion and defense of enlightenment values in society.

### **D. Wealth and Aesthetics**

We now come to the implications of wealth for the artistic and aesthetic process.<sup>81</sup> The textual basis for the value of wealth in the human rights context is found in Article 4, 17, 22, 23, and 27(1) of the UDHR.<sup>82</sup> Artists and aesthetes require a material foundation for them to perform their work of produce and creating art and providing aesthetic appraisal of it. It is, therefore, appropriate that the material basis of this form of social activity receives, at the very minimum, basic access to income, social security, and an alleviation of poverty. Additionally, there is the issue of being justly rewarded for meritorious contributions. It is recognized that if there is a right to culture, it may be that those who participate in this process should received material sustenance from the market and for those who have not access the market, there should be some mechanism for the state to support meritorious arts and artists. A problem in industrialized societies is the impact of commercialization on art. At which point does the influence of commercialization change the focus and integrity of both the artist and the aesthete. For example, it is possible that modern techniques of marketing use artistic creativity but then shade its orientation to the priority of marketing goods for profit. Here, art may therefore be in a sense subverted to trigger the emotions directed at instant gratification of the consumer. In this sense, when art send out such powerful signals it in effect makes the autonomous individual now subject to the compulsions of gratification. In today's society, where the channels of communication have been revolutionary, we have to work through the consequences of art, mass communications, and the defense of basic human rights values.

### **a. Well-Being and Aesthetics**

We now come to the human rights values implicated in well-being.<sup>83</sup> Well-being values are textually grounded in Articles 3, 5, 22, 24, and 25 of the UDHR.<sup>84</sup> The issues of well-being implicate the rights of artists and aesthetics, as well as the impact of art and aesthetics, on the larger community. For example, because art and aesthetics often undermines convention, humdrum, and tradition, it is exposed as representing something that deviates from the stability of expected patterns of cultural orientation. This suggests that artists and aesthetics are, sometimes, represented as a vulnerable and suspect class. Hence, there would be a concern that the well-being of this class receives special human rights consideration in terms of life, safety, comfort, and health. Additionally, artistic work may be an important factor, which contributes to somatic development as well as healthy psychological progress in society. Artists and aesthetes, therefore, have an interest in the way in which well-being secures their bodily integrity and mental health and their ability evolve and thrive artistically.

### **b. Skill and Aesthetics**

The next important human right value is the one implicated in skill.<sup>85</sup> The human rights dimensions of this value are to be found in the text of Article 27 of the UDHR.<sup>86</sup> The value of skill, as a human right, rests in the demand for the optimal acquisition of artistic and aesthetic skills. This statement implicates the rights to participate in processes by which artistic and aesthetic skill may be acquire the social conditions necessary to nurture and encourage the outcomes of latent talent and to ensure that there is no denial of capability skills by processes of invidious discrimination. In general, skills are one of the most important values that develop the capability skills of the human being, and this is particularly so for artistic and aesthetic skills; it is therefore, an important opportunity and capability skill that is central to the artists' aesthetic process and its intergenerational transmittal.

### **c. Respect and Aesthetics**

Another important human rights value that will influence the scope of art and aesthetics as a human right value is the value of respect.<sup>87</sup> Respect is given textual expression in Article 1, 2, 4, 6, 7, and 12 of the UDHR.<sup>88</sup> The most foundational aspect of the respect value is that individual artists and aesthetes are given, as a human right, the fundamental freedom of choice to participate in the artistic/aesthetic social process and as well to participate with optimum freedom of choice in the other value processes that serve to sustain the role of artists and aesthetes. Freedom of choice of also assumes equality of opportunity in the shaping and sharing of all values and an extinction of unfair discrimination for reasons irrelevant to opportunity and capability freedoms. Respect is also a value that incorporates deference as human right. Deference here means that meritorious work would receive recognition, will be honored, and the individual will have a reputation that receives community wide respect. Art does not thrive when respect is depreciated by discrimination, political tyranny, and repression. In context where opportunity freedoms are obliterated, respect is correspondingly diminished. Needless to say, stakeholders in art and aesthetics must be particularly skilled in utilizing all basis of power and authority to enhance respect in general and to specifically enhance respect for the class of artists and aesthetes. Some forms of art may debase the value of respect. This includes the generation of race hatred, or group hatred, symbols, which demonized vulnerable out-groups or others. It is

therefore an important human rights concern that the freedom of choice implicated in respect will not be used to destroy this very value.

#### **d. Affection and Aesthetics**

We now come to the final basic value to complete the human rights picture. This is the value of affection.<sup>89</sup> It is textually expressed in Article 16 of the UDHR.<sup>90</sup> There are many dimensions to the value of affect. Affect may be implicated in the issue of loyalty and solidarity, it may be implicated more generally as an important psycho-socio outcome of positive sentiment, and it may be a critical emotional state in micro-social relationships implicating a more intense emotionalized version of affect, which is conventionally called “love”. Artists and aesthetes are often inspired by the idealization of love; and it has long been a theme of important and noble artistic expression. The central truth behind the affection value is that, it is a value that implicates emotion and seems to give it a direction or orientation of normative salience. Let us for a moment consider the opposite value of affection in terms of emotion. We would be considering hate and related forms of negative sentiment. This suggests that emotion has large-scale political implications. In a nutshell, it is hard to conceive of the scale of gross human rights violations if those violations were not fed by negative sentiment, and reproduced in society as important outcomes of the social process. On the other hand, the commitment to a human rights oriented social process is also dependent in part on emotion, positive sentiment, a version of affection. When ordinary people establish an empathy, and a compassion that is global in its reach, it is a process which is sustained by positive sentiment. The critical insight is that art and aesthetics do have appeals to deeper emotional states. Thus, art may be a critical foundation for an approach to social process that is fed by positive sentiment and is therefore human rights centered. On the other hand, it is possible that some forms of art may be conditioned by negative sentiment and generates emotionalized sentiments that are human rights denying.

In the context of the stakeholders in art and aesthetics, the issue of affection, positive sentiment, and the idealization of love, may well be issues of great and fundamental importance. It is said that artists and aesthetes are highly sensitive and observant social participants. This sensitivity may emerge with a certain fragility in the structure of personality. In such a circumstance, such a personality does require the nurturing of relations, in micro-social settings, that provide for stability and for stronger emotional growth. In this sense, affection may be important to the personality stability of the stakeholders and which in turn may contribute to the forms of art that celebrate the dignity of the human being and the human community.

## **V. Conclusion**

As indicated earlier, this is an area that is wide and not as well traveled, in some respects. This paper therefore suggests that there is a great deal more to do in clarifying the nature of the aesthetic process, the impact of modern communications systems, and a working through of many other dimensions of culture art and aesthetics, which implicate a significant number of global institutional initiatives. Hopefully this paper will encourage scholars to further develop the pathway to a deeper understanding of the human rights dimensions of the aesthetic process.

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56. Proposed by the Executive Board of UNESCO in 1993 as a means of implementing the 1989 Recommendation. See *Decisions Adopted by the Executive Board at its 142nd Session* [UNESCO Doc.142 EX/Decisions, 10 Dec. 1993] and the *Guidelines - Living Human Treasures* sent to Member States by UNESCO on 16 Sept. 1998.
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59. *The Oral Heritage of Humanity*, Res. No. 23 of November 12, 1997.
60. *Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity*, The Regulations relating to the Proclamation were adopted by the Executive Board at its 155th session (Decision 155 EX/3.5.5) in 1998.
61. Supra note 49.
62. *International Covenant on Civil and Political Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force 23 March 1976, in accordance with Article 49 – Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 (Article 18).

63. Human Rights Committee, General Comment 22, Art. 18 (Forty-eight session, 1993), UN Doc. HRI/Gen/1/Rev. 1 at 35 (1994) paragraph 4 (emphasis added)
64. Supra note 60 Article 27.
65. Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994).
66. Supra note 4 Article 15(I)(A).
67. Roger O’Keefe, The “Right to Take Part in Cultural Life” under Article 15 of the ICESCR, *The International and Comparative Law Quarterly*, Vol. 47, No. 4, pp. 904-923 (October 1998)
68. Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It; Preamble subparagraph (c), UNESCO General Conference, meeting in Nairobi from 26 October to 30 November 1976, at its nineteenth session.
69. Id. paragraph 3(a).
70. The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.
71. Hans Morten Haugen, Traditional Knowledge and Human Rights, *The Journal of World Intellectual Property* (2005)
72. Id.
73. Agreement on Trade-Related Aspects of Intellectual Property Rights – The TRIPS Agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994.
74. Supra note 13.
75. Supra note 1, Article 18.
76. Supra note 1, Article 19.
77. Supra note 13.
78. Supra note 1, Article 7, 8, 9, 10, 11, 13, 14, 15, and 21.
79. Supra note 13.
80. Supra note 1, Articles 19, 22, 26 and 27.
81. Supra note 13.
82. Supra note 1, Articles 4, 17, 22, 23, and 27(1).
83. Supra note 13.
84. Supra note 1, Articles 3, 5, 22, 24, and 25.
85. Supra note 13.
86. Supra note 1, Article 27.
87. Supra note 13.
88. Supra note 1, Articles 1, 2, 4, 6, 7, and 12.
89. Supra note 13.
90. Supra note 1, Article 16.