

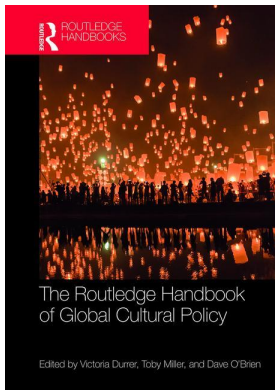
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Regulating cultural goods and identities across borders

J.P. Singh

Puzzle

Nation-states often cite safeguarding cultural identity as their chief motive for regulating international trade in creative products. This essay analyses this motivation in the context of theories of regulation and international trade. I argue that the shift from naming creative products as cultural products implicates cultural anxiety, which makes such politics especially vulnerable to influence from powerful groups. In doing so, cultural identity often becomes synonymous with national identity and marginalises other cultural voices. Creative products in this essay mostly refer to those from fine and performing arts and entertainment industries in broadcasting, film, and music. The term cultural product implies a sense of group identity and, therefore, the co-option of creative products as symbols of cultural identity.

The efforts to enhance or preserve national cultural identity seem to run counter to the logic of the information age in which cultural meanings circulate at ‘hyper-speeds’ across national and other borders. Furthermore, culture – as a way of life or a representation of this way of life through art – is the most malleable of human formations, forever subject to syncretism and adaptability. However, we live in an age of cultural anxiety: the fears of the loss of an identity seem to be almost as ubiquitous as the social media networks over which cultural politics are discussed. At the end of 2015, there were nearly 1.5 billion active Facebook users, over one billion unique viewers on YouTube, and 646 million Twitter users.¹ While these and other social networks proliferate, or perhaps because of them, the politics of cultural representation are rife with the idea that identities are becoming homogenised or worse, dominated with powerful representations circulated through global corporations (Pieterse 2004; Miller and Yüdice 2002). Add to this the fear of other ‘foreign’ influences and the anxiety deepens with a diverse list that includes, depending on the context, migrants, refugees, terrorists, Chinese or Indian capital and products, and religious ideas.² Until recently, though, the chief culprit named in international cultural debates was ‘Hollywood’ or the United States media with its global reach. The U.S. entertainment industry exports, collectively the country’s biggest trade item – average above \$100 billion dollars when royalty payments are taken into consideration. Released in December 2015, the global box office receipts for “Star Wars: The Force Awakens” were over \$1 billion within a month, and the

film was set to break all previous records after garnering more than \$2 billion within six months of its release. Seemingly, viewers vote with their feet while at the same time fearing the loss of identity.

This essay shows that regulation of cultural identity often parallels pressures from powerful political-economic interests to define 'culture' in accordance with their needs. In doing so, the politics of cultural identity often posit the strong against the weak both domestically and internationally. However, the political economy of cultural expressions does not always marginalise the voice of the weak. The first section below describes the rise of the politics of both national and cultural identity, before describing the regulation of cultural content. Thereafter, the essay describes the interplay of both the politics of national and cultural identities at the global level. I examine the cultural politics of the global South, often marginalised from the corridors of international regulation, and then turn to the commerce versus culture debate in international trade. Regulation in this essay is understood as explicit rule making through national or international institutions, which shapes the production and exchange of creative products.

National and cultural identities: a macro picture

The path from everyday cultural anxieties to international regulation of creative products, in two historical twists, led to the rise of the regulation of cultural products in the first half of the 20th century and, subsequently, co-joined their fate with social and cultural identity movements in the century's second half. What comes through in the cultural identity debates of the last century is a great uptick around the 1980s of the notion of a national culture along with an awareness of the notion of a group or cultural identity. A rough illustration of this twin trend can be seen in Figure 6.1, which follows the terms 'national identity' and 'cultural identity' through Google Books' n-grams viewer, tracking the use of these terms, in this case for the 1970 to 2010 period. The two decades of the cultural uptick between 1985 and 2005 are the chief subject of this essay.

'National identity' continues to triumph through the current institutional logic of regulation, but the more interesting logic of the future may rest in the second line of 'cultural identity' in the n-gram figure. While the two lines of uptick run almost parallel, the logic governing them might be different. The dominant line of national identity is that of the powerful voices mentioned above, while cultural identity also includes those without a voice or a representation in a story, song, or dramatization that gets circulated globally. From the great decolonising movements of the early 20th century to those of anti-racism raging across the world today, the chief struggle in cultural identity has been the ability of people to tell their own story and earn a just reward for their labours.

Another empirical suggestion in this essay acknowledges the role of market production and exchange, at local and global levels, which encourage the parallel cultural movements of our times: those fostering national cultures and those encouraging cultural diversity and voice. Most broadcast media, until the 1980s in most countries in the West, were primarily government owned, and here the link to the 'national interest' was already quite direct. Thus, the era of market liberalisation since the 1980s produced fears about the fate of 'national identity' championed through such media, while at the same time, even if only marginally providing an impetus to alternative cultural voices. The two politics of cultural production, that of cultural voices and of their market forms, are as apparent in the great debates on the creation and circulation of these images as they are in the emergent property rights, or chiefly economic incentives, that define who will profit from them.

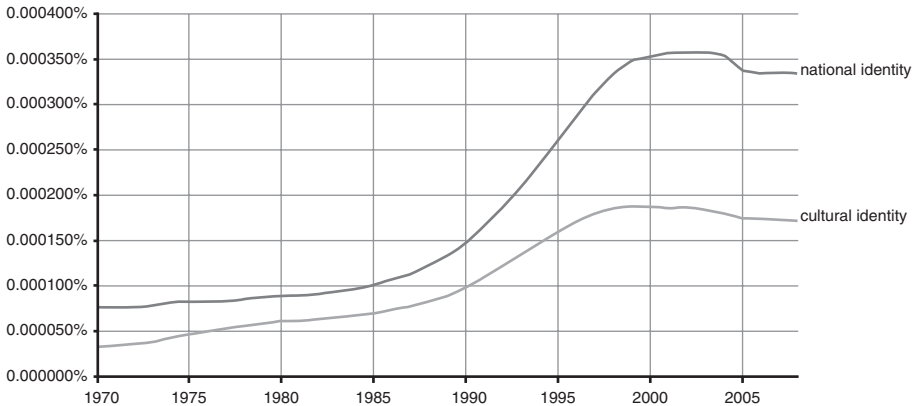


Figure 6.1 Frequency of terms 'national identity' and 'cultural identity' in Google Ngrams

Source: books.google.com/ngrams.

Note: n-grams measured on the Y axis provide relative frequencies of word counts in Google Books. For methodology, see: <http://books.google.com/ngrams/datasets>.

The regulatory politics of cultural products link back directly to the rise of cultural anxieties of our times, but favor those with access to the political processes. From the right and the left, regulation has always been understood as the recourse of the powerful to get what they want (Lipietz 1986; Stigler 1971). Those with power in global cultural politics are nation-states, public or private corporations, and elite international bureaucracies including intellectual ones. Those contesting the meaning of these politics are groups at local and transnational levels who seek a cultural voice or, as the educator Paulo Freire put it, the ability to name their world (Freire 1970).

Rise of cultural regulation

The regulation of creative products offers a unique instance of the elevation of moral and social reasons, often termed public interest in liberal theories of regulation, along parallel terms to the political economy of comparative advantage that has regulated international trade.³ Historically, the logic of regulation of such products within nation-states was informed with an entirely different rationale than one for their trade across national frontiers.

Royal patronage, historically, defined the terms of regulation of art in Europe. Art occupied a dubious position in politics, either positioned as antithetical to reason and the rational art of governance following Platonic thought, or marginalised to being a luxury for the extremely prosperous but ultimately for the benefit of the crown (Goodwin 2006). An opera house signified power: the most ornate opera houses, such as those in Paris and Vienna, were constructed in absolutist monarchies to project power (Cummings and Katz 1987). With growing urbanisation and the rise of the bourgeoisie, art collections expanded, and art moved from being a luxury dependent on patronage to a commodity that could now be afforded by a rising middle class as well. Therefore, art became unhinged from patronage and the prerogatives of the crown in the 19th century, in turn encouraging a class of creative workers that by the 20th century could earn full-time wages in artistic production (Goodwin 2006; Throsby 2001). In other words, art moved from a part-time activity of the privileged few, and many a starving artist, to full-time employment for many.⁴ Art

has several types of value, and price is one of them: the movement of art from patronage to markets has also shifted price fixings of royal commissions to those of art auctions and royalty payments from copyright (Frey 2000; Singh 2011). The rise of the market system also allowed a greater number of artists to fetch returns that were available only to a few through royal patronage (Cowen 1998). This new political economy altered traditional patrimonies of art even if institutions such as a national museum remain defenders of patrimonial practices. Most of the London Tate Modern museum's work since 2000 has been acquired from the Global South, including Asia, Africa, and Latin America: "The 21st century museum is evolving into a place of encounter, social nexus, a contemporary agora" (Wullschlager 2016).

Along with shifting patterns of patronage and patrimony, the technological basis of creative industries has also changed. With the rise of the creative class and associated industries, especially in entertainment, a new basis for regulation had to be invented. This became imperative in the 20th century with the ability to record sounds and to broadcast or convey them over long distances through telephones, radio, and television. Creative products could earn market returns for sustenance, but entertainment industries also possessed some public goods aspects: congestion of airwaves or argument about a natural monopoly in telephones, which necessitated state intervention to ensure that the state and the people had access. Early universal service regulation in telephony, for example, was meant to ensure that telephones reached the rural areas (Mueller 1996). This necessitated regulation especially in industries that were monopolistic (telecommunications) or oligopolistic (broadcasting), in order to make incumbent providers not just "cream-skim" in urban areas, but also provide access to less-privileged demographics in the population, for example in rural areas.

The theory of regulation is surprisingly consensual among conservative economists and radical Marxists, albeit with different policy implications (Horwitz 1991). Economist George Stigler (1971) notes that regulation is provided on behest of those who are regulated, while Karl Marx wrote of the state as the committee for the management of the interests of the bourgeoisie (Poulantzas 1969). Based on this view, public choice economics believes in a minimalist role for the state, while radical political economy prescribes either the state's overthrow or a maximalist role to thwart the capitalist class. The liberal welfare alternative is an in-between position, prescribing regulation on behalf of public interest. The state ownership of media in the Eastern bloc and many parts of the developing world was an extension of this notion of public interest; the media served the state, which served citizens. In post-war Western Europe, the state owned most of the means of broadcasting in the name of national interest.

In the United States, 'public interest' guided the regulation of the media industries through the Federal Communication Commission, which applied historically to telecommunication and broadcasting, and in the last two decades to digital content transmission. Regulation of airwaves was necessary to ensure that a TV or radio station represented all political opinions and social stratifications. In practice, this became a question of access to the airwaves: the famous precedent-setting case of WLBT in Jackson, Mississippi, started with petitions and lawsuits from the black community in Mississippi to have its voice represented; the case began in 1955 and settled in favour of the Black community in 1966 (Rabin 1975–6).

While the U.S. notion of public interest historically seemed different from national ownership of broadcasting in Western Europe, public interest coincided with a somewhat ill-defined notion of public welfare based on utilitarian calculations. In practical terms, therefore, public interest was often conflated with notions of national interest.

Public interest regulation in the U.S., mandating access, or national interest regulation in other parts of the world now continues to decrease in importance as multiple access channels proliferate and cost-effective satellite technologies reach rural or far-flung areas. These

developments along with increasing flows of global digital content have contributed to the rise of both the politics of cultural anxiety and identity. The old regulatory model catered to a middle ground of national interest. However, just as public interest lawsuits challenged the old media in the United States, the proliferation of TV and radio channels globally has directed people toward dedicated media. This has increased rather than decreased the politics of cultural anxiety. One of the unfortunate results is the proliferation of media homophily effects, with broadcast media viewers or social media users drawn to only those sources and networks that share their values (Axelrod 1997; Lazarsfeld and Merton 1954). With de facto universal access for all values and users, the unfortunate side effect has been the inability of homophilous networks to communicate with each other, further resulting in the degradation of the public sphere (Centola et al. 2007; Singh 2013).

Enter two great global debates starting in the 1970s that elevated existing national concerns about the creation of cultural content to the international level, and interestingly both cases featured the United Nations Educational Scientific and Cultural Organization as a central player. The broader legacies of these debates will be discussed in the next two subsections, but a summary is necessary to discuss the broad implications for international regulation. In both cases, countries pushed back against global information flows, which sought to represent them, often calling these flows either inaccurate and prejudiced, or destructive toward local ways of life understood mostly in national ways. The first phase began in the post-colonial era when developing countries began to consider the role of communication 'modernisation' in their societies, which soon led to questioning the role of global media firms, mostly Western, in their territories. It culminated in the calls for New World Information and Communication Order (NWICO) in 1976 in the UN General Assembly and the publication of The MacBride Commission (1980) report that articulated the importance of communication and information in the developing world. NWICO sought to correct the imbalance of information flows between the North and the South and sought to make the developing world self-reliant with its own communication infrastructures. Nordenstrung (1983) traced NWICO concerns back to the nationalist movement of the colonies and wrote of the four D's of NWICO: decolonization, democratization, demonopolization, and development. Unfortunately, UNESCO was unable to prevent NWICO becoming mired in the Cold War/East-West confrontation, and the developing world leaned heavily on the resources and rhetoric of the Soviet bloc for support in the UN and UNESCO. The NWICO controversies contributed to the departure of the U.S., U.K., and Singapore from UNESCO in the 1980s. After the departure of these three countries and budget cuts, NWICO died in UNESCO. The second great debate on global content flows dealt with the dominant position of the United States versus the rest of the world. It came to a head in the 1980s as the U.S. pushed for further liberalisation of trade flows governing entertainment industries. The liberalisation push started in the General Agreement for Tariffs and Trade and then moved to UNESCO. In 2005, in a vote of 148 countries for and two against (U.S and Israel), UNESCO voted for the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. After ratification by 33 percent of the countries, as required in international law, the Convention became effective in 2008.

The implications for international regulatory theory can be summarized now. The basis for international trade has been the comparative advantage of nations in the production of commodities. The first great debate, namely NWICO, was often portrayed in the West, a sub-section of the Global North, as the inability of the resource-poor Global South to represent itself and therefore beholden to global conglomerates and their advantages in producing cultural and media content (Boyd-Barrett 1977). In conservative parts of the West, especially

in Thatcher's Britain and Reagan's United States, NWICO was understood in official circles as efforts to curtail free speech in the Global South. For its part, the South called attention to the power of global conglomerates to gather, produce, and disseminate news and entertainment content. In hindsight, both sides were making a partially cultural argument: the West in citing press freedoms and the South in questioning the representations and cultural dominance of the West.

In the second debate, the European Community waged a 'cultural war' against the United States, in trying to institute exceptions from free flows of entertainment content. While most West European states had not supported the Global South in the NWICO advocacy, in the 1980s, the EC states cited preservation of cultural diversity as a rationale for derogating from international trade in entertainment industries. The United States merely saw the moves as protectionist in a trade sense, designed to safeguard entertainment industries in EC that were highly subsidized or state-owned.

Two important elements of cultural regulation can be shifted from the historical discussion above. First, international and domestic policy makers regularly acknowledged issues of cultural identity and access to technologies of representation as important issues in regulating international trade. Second, international regulation privileged national identity. The last point is consistent with theories of regulation covered earlier. Those opposing and abetting cultural identity issues at GATT's successor World Trade Organization or UNESCO generally named their representation in terms of national interest and identity. In fact, national elites employed debates on cultural identity to further endow meaning to national borders (Goff 2000). This essay now discusses the history of North-South regulatory issues during NWICO and thereafter, and then turns to efforts that led up to the 2005 UNESCO convention on cultural diversity.

Post-colonial cultural politics

The communication and cultural aspirations of the post-colonial world found expression through the NWICO debates. The influential MacBride Commission report (1980: 254–255), that outlined the historical and epistemic rationales for NWICO, articulated the aspirations as follows: "The object must be to utilize the unique capacities of each form of communication, from interpersonal and traditional to the most modern, to make men and societies aware of their rights, harmonize unity and diversity, and foster the growth of individuals and communities within the wider frame of national development in an interdependent world."

While NWICO debates were broader than those of cultural identities and rights, nevertheless the precedence is important for both articulating post-colonial aspirations and ran parallel to UNESCO's universalism, which often rested on Eurocentric conceptions of national identity (Singh 2011). Although called by different names, notions of cultural or group identities and respect for cultural diversity run parallel to UNESCO's universal ideals, which often rested on Eurocentric humanistic conceptions. UNESCO's Eight-Volume *General History of Africa* begun in the 1950s challenged canonical interpretations of Eurocentric views, even if couched in universal terms. Political controversies in the 1960s and 1970s provide further evidence. The 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) came at the behest of the Eastern bloc and many post-colonial countries that viewed the individualistic focus of the Universal Declaration of Human Rights in Western terms.

In the 1980s, UNESCO began considering the role of culture in development. Here, too, it reflected broader ideational and transnational movements that spoke to culture. Examples

include the Mayan Rights movements in Latin America (Davis 2004) or the push back from the developing world on development objectives and instruments framed in the global North (Escobar 1995). The 1982 World Conference on Cultural Policies, or *Mondiacult*, in Mexico forwarded an anthropological view of culture. But underlying it were broad political and cultural pressures. Group of 77 (G-77) developing countries were behind the move in 1987 to declare 1988–97 the Decade for Culture and Development. In 1993, UN Secretary-General Boutros Boutros-Ghali and UNESCO's Director-General Federico Mayor created the World Commission on Culture and Development. The first sentence of the Commission's 1995 report, *Our Creative Diversity*, notes: "Development divorced from its human and cultural context is growth without a soul" (Perez de Cuellar 1995: 15).

The most relevant example of international regulation for this essay may be UNESCO's efforts to recognise non-Western ideas of cultural heritage. Just as indigenous rights movements began to circulate in the world, UNESCO adopted this cause. In the 1970s, the Smithsonian Institution in Washington, DC, and UNESCO organised a series of symposia on folklore and cultural life that are now regarded as the beginnings of the moves that eventually led in 2003 to the Convention on the Safeguarding of the Intangible Cultural Heritage (Aikawa 2004; Mason and de la Torre 2000). In the United States, the impetus came from acknowledging the role of folklore and oral cultures in African-American and Native-American groups. The 2003 UNESCO convention on intangible cultural heritage, therefore, safeguards historical processes rather than products and monuments. East Asia and Sub-Saharan Africa, in particular, championed the discussions as conforming to their notions of heritage. There was also a link to the 2005 convention discussed later: the 2003 convention, in its politics of negotiation, is also regarded as the price these regions extracted for supporting the 2005 convention. The 2003 convention was a counterpart to the 'tangible' heritage convention of 1972, while the 2005 convention dealt mostly with cultural industries, conceived in terms of diversity.

The soul of cultural diversity in the developing world may be in the notion of cultural voice, which Freire (1970) described as the ability of the people to name their world. Despite UNESCO's *de facto* need to work with national-states, the post-colonial state (or any state really), an evolving architecture, is far too incomplete a project to speak to all cultural voices and aspirations in the developing world. It would also be simplistic to note that the space is completely filled in by Western cultural representations. While detailing the political economy of creative and cultural productions from the Global South is beyond the scope of this essay, it is useful to consider that the cultural spaces in the developing world may also showcase transnational linkages rather than only Western corporate domination. Post-apartheid South African cinema has relied on links with Hollywood networks for marketing and circulation. In general, Browne (2009: 95) notes that "The African film producer has not copied the American producer although he may have been influenced by the Western world in making films in the first place." While religious conservatives bemoan the rise of sexy female singers in the Arab world, these singers have relied on music industry networks to destabilise patriarchal roles (Mellor 2005). Nestor García Canclini (1995) notes that cultural hybridity in the developing world is understood as much through the mix of the modern and the traditional as the intermixing of nations, ethnic groups, and classes.

Commerce versus cultural rules and regulations

The case analysed here involves initially the United States and the European Community, in particular France during the Uruguay Round (1986–94) of the GATT, and, in recent years,

the entire world in the framing of the Universal Convention on Protection and Promotion of Cultural Expressions at UNESCO in 2005. From the late-1940s onwards, Western Europe successfully argued that creative industries, especially films, needed special protections such as quotas to protect its war-ravaged ‘infant-industry’ in films. During the Uruguay Round of trade talks, the language of ‘cultural exception’ supplemented that of quotas. As a result, the European Union took the now-famous Most Favored Nation or MFN exemption, which allowed it to preserve its cultural industry policies.

The main issue of concern was the European Commission’s Television without Frontiers Directive that came into force in 1992 just as the Uruguay Round headed into its final hours of negotiations. The Directive sought to reserve 51 percent of the total program broadcast on any European channel to home-grown programs. The EU wanted the 51 percent restriction institutionalised through the evolving General Agreement on Trade in Services (GATS).

A related issue was the EU position that content restrictions apply to all of 300-plus channels that were coming about as a result of satellite and cable technologies. The U.S. wanted content restrictions applied to only 50–70 percent of the channels. Presumably, through this measure, U.S. networks such as CNN or Discovery could operate in Europe without using local content. Furthermore, the Motion Picture Association of America also argued that inasmuch as U.S. films and television programs dominate in Europe, its members were subsidising European television and thus objected to the agreement sought by the Europeans at the Uruguay Round.⁵ With the EU and U.S. squaring off on opposite sides, these negotiations came to be called *guerres des images* or “war of the images” in France. Transnational cultural industry coalitions among the Europeans led the way toward the MFN exemption that allowed the EU not to make any commitments toward liberalising its audio-visual sectors as they are known in the GATT/WTO jargon. In the EU, this provision came to be known as the ‘cultural exception’ underscoring the firm belief that cultural industries were non-negotiable.⁶

In the decade following the Uruguay Round, there was a progressive hardening of the European position on creative industries. Europeans framed the issue in cultural identity terms but shifted the focus from cultural exception to cultural diversity. Canada and France led an international coalition to switch the cultural industry issue over to UNESCO from the WTO.⁷ This resulted in the introduction at UNESCO of a Universal Declaration on Cultural Diversity in 2001 and Universal Convention on the Protection and Promotion of Cultural Expressions in 2005. The Preamble to the 2005 convention starts by “affirming that cultural diversity is a defining characteristic of humanity.” Its 35 articles affirm the rights of nations to formulate cultural policies that promote cultural diversity and protect indigenous cultures. Taken collectively, these articles outline a legal rationale against liberalisation. One of the articles states that if there were a trade versus cultural protection issue in the future, it would have to be resolved in a spirit of “mutual supportiveness” that does not subordinate the UNESCO convention.

At its core, the convention upholds a notion of cultural identity as national identity. The convention preamble affirms that “cultural diversity is a defining characteristic of humanity.” However, the task of defining what constitutes diversity and the implementation of the policies and regulations thereof is left to nation-states. For example, Article 2 recognises “the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expression within their territory.” Article 6 recognises the rights of states to adopt “regulatory measures aimed at protecting and promoting diversity of cultural expression.” For countries such as France, this has meant promoting a conception of Frenchness in French language to the non-recognition of any other cultural identity in France. UNESCO (2013)

statistics show, for example, that only one language is represented in French films while in Finland there are 11 and in the UK 12 languages.

There are other contradictions. While the force of the international coalition rested upon the feared onslaught of cultural exports from the United States, those seeking cultural protections were themselves top cultural exporters or seeking to become so. In the statistics released by UNESCO (2005), Canada and France rank among the top ten countries in terms of international trade in cultural products. Second, while the share of trade for the United States and European Union has declined, that for East Asia has doubled; it is increasing for other parts of the developing world as well (UNESCO 2005). UNESCO statistics might underestimate the scope of U.S. exports by counting customs data and not royalty receipts, yet the undercounting issue might go beyond the United States in significant ways. For example, these statistics do not count related activities such as information technology, advertising, and architectural services. Many of these activities are now outsourced to developing countries. Similarly, emerging centres of film and television production in the developing world – Argentina, Brazil, Mexico, Egypt, West Africa, South Africa, India and China – are also underestimated here. Last, if cultural tourism receipts were to be included, the total ‘exports’ of those seeking cultural protections would rise even further. According to the World Tourism Organization annual reports, France tops the list of international tourist arrivals, accounting for 84 million of the total 1.13 billion international tourist arrivals in 2014 (World Tourism Organization 2015: 6).

In 2015, UNESCO celebrated the 10th anniversary of the cultural diversity convention: the convention is widely viewed as an important policy instrument addressing debates on cultural diversity, but one that is limited in scope in terms of issues of cultural identity and rights and the new technologies of cultural representation (De Beukelaer et al. 2015). A look at the convention’s articles show that although it is supposed to be framed for the broader purpose of ensuring cultural diversity, its main focus seems to be preserving and protecting (from trade) a few cultural industries in national terms. Thus, cultural industry seems to be coterminous with national identity. The case of France is especially ironic because, like many other European states, its government does not collect any data on any identity but national identity. Its ethnic minorities often see themselves as excluded from socio-political-economic life. Just as the ink was drying on the 2005 convention, a few days later riots broke out in several French cities over police brutality leading President Jacques Chirac to declare a state of emergency on 8 November 2005 that lasted until 4 January 2006. On the other hand, France’s partner in leading the moves for the 2005 Convention is Canada, which is a *de jure* two-nation bi-lingual state (*de facto*, it has many languages) and well known for recognising its indigenous groups (first nation) and their cultures.

At an organisational level, UNESCO can point to several intra-organisational measures that attest to the smooth functioning of the organisation.⁸ The Convention was ratified on 18 March 2007. According to the provision of article 18, an International Fund for Cultural Diversity was set up with voluntary contributions; it has spent \$5.8 million since its inception on 84 projects in 49 developing countries. The parties to the Convention submit quadriennial reports to UNESCO, and several offices have contributed to the work of the Convention. The UNESCO Institute for Statistics (UIS) issued a new Framework for Cultural Statistics (UNESCO 2009), which took into account the work of the Convention. UIS also set up an Expert Group on Measuring the Diversity of Cultural Expressions.⁹

At the level of global norm formation, four other issues provide some context for evaluating the implementation record of the conference. First, legally the Convention lacks force.

The Vienna Convention on the Law of Treaties allows for later Conventions to supersede earlier ones on the same topic. Article 20 language, as noted earlier, sets a new legal precedent of 'mutual supportiveness,' which means that the Convention does not subordinate instruments at the WTO. Second, the re-entry of the United States to UNESCO changed not just the wording of specific articles as mentioned above, but also the trajectory of the implementation. The Convention was not a priority for the United States, and it wanted to direct resources of the organisation elsewhere. While UNESCO's budgetary processes are arcane and complex, great powers do carry clout (Hoggart 1978; Singh 2011). In a further twist, the United States stopped paying its dues in 2011 after UNESCO voted to admit Palestine as a member. Just when the organisation could have hoped to allocate resources to the measures, the United States cut off funding. The U.S. engagement with UNESCO can then be summarised in two phases: dilute the convention (2004–5) and then drop funding for the organisation altogether (2011). Third, the Convention is premised on an analogue model of product flows in cultural industries. In such a world, member-states ship cultural products to each other in metal containers, which can be regulated at national borders, while governments encourage their own creative industries in a variety of ways. In a world of digital technologies, the analogue model falls apart.

The workings of the convention in the last ten years, therefore, can also be examined within the broad context of overlapping issue-areas in other international organisations that attend to issues such as trade, intellectual property, or economic development. The 2005 Convention sought to address the economic aspects of cultural globalisation. However, the lack of movement on further liberalisation on culture (or any other issue) from the World Trade Organization has, in an ironic twist, put a damper on UNESCO's efforts to thwart such moves because the original impetus is now removed. Furthermore, the increasing salience of intellectual property concerns has changed the geo-strategic dimension of the cultural globalisation debate from the United States versus EU/Canada parameter to a Global North–South axis. Global economic rule-making in culture now concentrates on intellectual property issues rather than cultural production.

The trade versus culture debate has settled in favour of trade in another way on the issue of intellectual property. In the last decade, the chief debate on cultural content has been on global North's attempts to develop a digital trade agenda, which includes copyright issues. In fact, digital trade may be one of the most important trade issues for the United States at present (Aaronson 2016). Proponents of strong copyright protection have argued that its enforcement results in further innovation, appropriate rewards for the artists, and further creativity. Digitisation has also altered the major battle in cultural productions from Hollywood versus the rest to once again a global North–South battle on international intellectual property regulation and enforcement. Countries such as Canada and France have formed a formidable global coalition with their cultural adversaries such as the United States to enact and enforce restrictive intellectual property rights. Examples include the many preferential trade agreements that the U.S. and EU have signed with countries in Latin America and Sub-Saharan Africa. A particularly restrictive measure is the most recent Anti-Counterfeiting Trade Agreement (ACTA) signed in 2011 but not yet ratified mostly due to civil society protests worldwide (Sell 2013). ACTA went far beyond the existing WTO agreements in intellectual property protection and enforcement, which are now the most important cultural industry issues for both the rich-country signatories and the non-signatories to the 2005 Convention. The 2015 TransPacific Partnership agreement among 13 trade partners including the U.S., Canada, Japan, and Australia has included comprehensive provisions for online protection.

Conclusion

International cultural regulation is sometimes analysed as the ability of the nation-states to regulate an international cultural division of labour in production and exchange of creative artefacts. Certainly, a debate such as NWICO can be analysed as a struggle against cultural domination by Western conglomerates. The UNESCO Convention can similarly be viewed as a moderation within dominant cultural producers. However, such a view is incomplete at best and empirically incorrect at worst. In the former case, it does not explain the struggle between cultural and national identities and the non-material anxieties in which they are embedded. In the latter case, it privileges material production (and labour or class) as an antecedent condition or an article of faith.

This essay has presented a somewhat non-linear and multi-causal argument about international cultural regulation especially in the two decades of what this essay called the cultural uptick from 1985–2005. The argument starts with technologies of representation and cultural anxieties that provide the context for understanding the struggle between national and cultural identities. It also distinguishes between creative expressions and cultural expressions. National identity is one among many types of cultural identities but one that makes the nation-state salient in its politics. The imprint of the nation-state is expansive in current international regulatory instruments at the WTO and UNESCO. However, in the case of the WTO the state seems beholden to commercial factors while at UNESCO the state has tried to reinforce its own paternal powers to regulate cultural production within its borders in the name of national identity. The imprint of commercial production of creative products and their relationship is, therefore, ambiguous.

Future research will need to confront two interlinked issues. First, it must move beyond a tenuous regulatory binary between culture and trade. As this essay shows, this debate itself reflects powerful interests within nation-states who either want to protect and regulate domestic creative industries in the name of (national) cultural identity or promote exports as creative products that are either not cultural or do not threaten cultural identity. Trade can promote, restrict, or transform cultural identities. Positioning trade as a threat or a thrust toward maintaining cultural identities is misleading. Second, regulation obeys the dictums of the powerful, but this essay shows that cultural voices from the meek and the marginalised are not always absent. New technologies establish affordances for these new cultural voices. Research needs to explore both the empirical and the normative possibilities for these cultural voices and the regulatory provisions that can enhance these affordances.

International cultural regulation that is deliberative, in the sense of being inclusive and informed with public reasoning, must result from participatory processes that go beyond the elite in international organisations, nation-states, and commercial enterprises. More and more, artists, creative producers, and civil society are involved in shaping the commerce and politics of cultural regulation. Their voices are incipient but increasingly important to understanding international cultural politics. The emerging international cultural regulation will result from the interstitialities and intersections among national and cultural identities, commercial and creative products, and the aspirations among people to name and present their world.

Notes

- 1 Zephoria (2016), YouTube (2016) and Twitter Statistics (2016).
- 2 See, for example, Benhabib (2002); Esposito (1992), Evrigenis (2008); Kang (2009).
- 3 Notion of public interest is derived from welfare economics, which sanctions state regulation and redistribution to ensure the greatest satisfaction of citizens. Comparative advantage relies on the

relative abundance of resources or factors of production within an economy. Intuitively understood, it rests upon a division of labor across countries.

- 4 Indirectly, the elite continued to shape the type of art would be produced through their influence on educational and other institutions that defined taste, in this case in cultural terms (Becker 2000; Miller and Yüdice 2002).
- 5 Television programs in France, and in many other European states, are subsidised by film box office receipts, the majority of which are generated by American films and levies on blank video-tapes used to record these programs.
- 6 The European Union negotiates as a single entity at the WTO. However, its single position often reveals fissures. UK, the biggest cultural products exporter in the EU, and countries such as Denmark and Netherlands are reluctant to go along with protectionist measures.
- 7 The EU does not negotiate as a single entity at UNESCO. However, most EU states took the same position on the 2005 UNESCO Convention discussed in this essay.
- 8 Many of these measures are listed on the Convention's website. <http://www.unesco.org/new/en/culture/themes/cultural-diversity/diversity-of-cultural-expressions/the-convention/>.
- 9 The author served on both the Taskforce and the Working Group.

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