‘IS CULTURE A “UNIVERSAL” RIGHT?
THREE CASE STUDIES OF NORM NEGOTIATION
WITHIN INTERNATIONAL AND TRANSNATIONAL NETWORKS

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By

Sarah Anne-Elizabeth Thompson, B.A.

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Sarah Anne-Elizabeth Thompson, B.A.

Thesis Advisor: J.P. Singh, Ph.D.

Reader: Susan Sell, Ph.D.

ABSTRACT

Is culture a “universal” right? This thesis explores how international networks, consisting primarily of state actors, share understandings of “universal” cultural rights that differ from transnational networks, consisting primarily of civil society and non-state actors. Specifically, this thesis examines how different types of global networks tend to negotiate norms of “universal” cultural rights that privilege either states or people.

Through a structured, focused comparison of UNESCO, an international network, and the Pimicikimak Cree Nation and the Representative Council of Black Associations, two civil society groups that have hooked into transnational networks, this thesis argues that norms of “universal” cultural rights will privilege either states or people, depending on the network that negotiates the norm. International networks tend to negotiate pluralist norms, which privilege the cultural rights of states. Transnational networks tend to negotiate solidarist norms, which privilege the cultural rights of people.

In making this argument, this thesis offers a new way of thinking about universalism; namely, that even while negotiations of norms regarding “universal” cultural rights lead to the temporary privileging of either states or people, the notion and rhetoric of universalism are still useful tools that empower both states and people to fight
for rights vis-à-vis greater powers within international society. Alternatively, the notion
and rhetoric of universalism can also be used as a weapon against weaker people or
states. As such, it is always important to examine not only the language that actors evoke
when negotiating norms or making claims to “universal” cultural rights, but also the
power relations among actors that converge around this beautiful but ideological
language.
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CHAPTER 1. Is Culture a “Universal” Right?

INTRODUCTION

In a short essay published in World Policy Journal, Shashi Tharoor asks the question: “When you stop a man in traditional dress beating his wife, are you upholding her human rights or violating his?” (2001) Tharoor’s question demonstrates the built-in conflict between cultural rights and human rights, two norms of “universal” rights. While violence against women is an extreme example to use in typifying cultural rights, conflicts between these two norms are evident in many other social practices. For example, what are the rights of a woman living in a community that requires her to stay confined to a room while she is menstruating—for that matter, what are the rights of her community? Or, what are the rights of a child suffering from a life-threatening illness, but whose religion prevents him from taking life-saving medicines? When is culture itself a “universal” human right, and when does culture stand in the way of rights?

From the perspective of universalism, all human beings share a common core of values, regardless of cultural background (Dower, 1998); therefore, the norm of “universal” human rights defends this commonality across the entire globe. From the perspective of particularism, this common core cannot possibly exist, as values are determined wholly by cultural background (Dower, 1998); therefore, the norm of “universal” cultural rights defends this diversity across the entire globe. To bring these

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1 In reference to the Universal Declaration of Human Rights, Kymlicka (2005) argues: “Article 27…articulates a truly universal cultural right—a right that can be claimed by all individuals and carried with them as they move around the world” (section 4).
contrary views into a common focus, cultural rights might be conceived as the
“universal” human right to *particular* cultural backgrounds, or cultural identity.
Unfortunately, advocates of universal rights cannot simply employ this empty formula to
calculate rights, provided these advocates are truly in the business of helping people; in
other words, they cannot simply agree to disagree. For just as the universalist’s claim
cannot help the husband who seeks to defend his cultural identity, the particularist’s
claim cannot help the wife who seeks to defend her human dignity.

In the effort to move beyond these contrary views, scholars have studied specific
“ground-level” cases in which tensions between norms have been resolved—tensions
between individual rights and group rights, for example, and between the right to retain
traditional cultural practices and right to navigate new horizons. As an example, Jolly
(2002) has studied collectives of Vanuatu women who sought legal protection against
domestic violence by evoking the language of universal rights; at the same time, these
women expressed respect and loyalty to their ancestral values and local customs. Yet
ground-level case studies offer few actionable answers, either; at best, they offer a
reminder that tensions between norms, such as human rights and cultural rights, will
eventually dissipate alongside changing conditions of the world (Ruggie, 1983). In time,
this enables new normative boundaries to be drawn around values that were previously
thought to be in conflict—the husband will continue to wear traditional dress but will also
stop beating his wife, the child will continue to practice his religion but will also take
life-saving medicines—or these new normative boundaries could lead us in an altogether
different direction.
Notably, these claims to universalism and particularism, and these “ground-level” hybrids of human rights and cultural rights, often focus upon whether conflicts between norms will eventually resolve, without asking where these tensions originated. However, this thesis cuts in a decidedly different direction, asking who negotiates these norms in the first place, as well as how these norms are negotiated. I ask these questions because tensions between human rights and cultural rights, which are usually understood as tensions between the universal and the particular, are frequently studied at a kind of “end point” of norm diffusion—on the ground-level, between ordinary citizens, and usually in the developing world. However, my contention is that these tensions already exist at the “starting point” of norm creation; specifically, they exist between different types of global networks that negotiate norms of “universal” cultural rights.

**Thesis Context**

At first glance, it may appear that conflicts between norms, such as conflicts between human rights and cultural rights, derive from distinct values, social practices, and traditions that have percolated within communities for hundreds of years, and which “outsiders” can do little to change. For example, if your community has practiced fasting and body alterations for centuries as cultural rituals, and these rituals are something you respect and value on your own terms, then who am I to tell you that this practice interferes with your “universal” human rights? Likewise, if I choose not to purchase recordings of folksongs that my community has passed down through many generations, simply because I prefer hip-hop music that represents or is produced another community, then who are you to tell me that this practice interferes with my “universal” cultural rights? In reading the official text of the *UNESCO Declaration on Cultural Diversity*
(2001), it appears that cultural rights know no bounds, as long as they comply with “fundamental freedoms” and human rights:

Article 5: All persons have therefore the right to express themselves…all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.²

And yet, we know it is not always clear what, exactly, constitutes a cultural right, and whether this type of right conflicts with human rights, which is widely understood as the right to self-determination.³ It is my contention that these conflicts do not occur only at the ground-level of these social interactions, such as the examples illustrated above. When making claims to rights, both states and ordinary citizens evoke the language of “universal” rights—language that originally was enshrined in the Universal Declaration of Human Rights, language has since been spun out again and again in subsequent declarations of rights, and language that has, within these declarations, become connected to more and more issues such as labor, marriage, and freedom of movement. The point is, the language that goes into the final text matters, and, during the process of negotiating these norms, different people advocate for different notions of what is “universal” and what is not, setting the stage for future gaps between the aspirational aspects of rights, and their actual implementation. In the end, these negotiations determine what is folded


³ Underrepresented Nations and Peoples Website. See: http://www.unpo.org/content/view/4957/72/
into the final text, which eventually will be evoked in claims to “universal” rights. Even the Universal Declaration of Human Rights is an example of this:

The General Assembly, in turn, scrutinized the document, with the 58 Member States voting a total of 1,400 times on practically every word and every clause of the text. There were many debates. Some Islamic States objected to the articles on equal marriage rights and on the right to change religious belief, for example, while several Western countries criticized the inclusion of economic, social and cultural rights.4

Today, more than sixty years after this Declaration was signed, states are no longer the only type of actors that negotiate these norms, and legal documents such as international bills of rights are not the only media that enshrine these norms. New technologies are moving people, products, ideas and information across borders faster than ever before—a process we typically call globalization. This process is causing the borders of states to become more porous and, for better or worse, different cultures are finding out more about each other. This leads to the question—are cultural rights still the privilege of the state, which, under the traditional Westphalian model, represents the totality or universality of its own people? After all, some matters such as “culture” and “rights” might be too big and too varied, quite simply, to manage at any level higher than the state. Or perhaps, are cultural rights actually the privilege of people who, through transnational networks, are learning more about each other? Are we moving ever closer to a pluralist international society, which still leaves the too-big and too-varied issues to the state, or are we moving closer to a solidarist international society, which opens these issues to a wider array of actors in an even greater attempt at universalism? In regards to

this question, this thesis takes the stance of Bull (1997), who argues that international society contains elements of both pluralism and solidarism. As such, norms of “universal” cultural rights will privilege either states or people, depending upon who negotiates these norms.

**Thesis Argument**

This thesis argues that norms of “universal” cultural rights will privilege either states or people, depending upon the network that negotiates the norm. International networks tend to negotiate *pluralist* norms, which privilege the cultural rights of states. Transnational networks tend to negotiate *solidarist* norms, which privilege the cultural rights of people.5 In making this argument, this thesis offers a new way of thinking about universalism; namely, that even while negotiations of norms regarding “universal” cultural rights lead to the temporary privileging of either states or people, the notion and rhetoric of universalism are still useful tools that empower both states and people to fight for rights vis-à-vis greater powers within international society. Alternatively, the notion and rhetoric of universalism can also be used as a weapon against weaker people or states. As such, it is always important to examine not only the language that actors evoke when negotiating norms or making claims to “universal” cultural rights, but also the power relations among actors that converge around this beautiful but ideological language.

5 This thesis borrows the concepts of pluralism and solidarism from the English School of international relations theory. The use of these concepts within this thesis refer primarily to whether norms of “universal” cultural rights may be negotiated only by states or by other actors, as well.
In the empirical chapters to follow, I will support this argument by undertaking a structured, focused comparison of two types of global networks: international and transnational. In chapter three, the international network I will examine is the United Nations Educational, Scientific, and Cultural Organization (UNESCO). In chapter four, I will examine two different groups that have hooked into transnational networks. The first group is the Pimicikamak Cree Nation, an indigenous community located in Canada. The second group is the Representative Council of Black Associations, a lobbying organization for black “immigrants” in France. By examining three tactics of norm negotiation that both types of networks have employed—venue-switching, coalition-building, and issue-framing (see Singh, 2009)—this comparison will demonstrate that norms of “universal” cultural rights can be either pluralist or solidarist, depending upon who negotiates the norm.

**Reasons for Study**

It is important to understand the relationship between different types of norms and the different types of networks that negotiate them. At a fundamental level, norms are shared understandings of what ought to be done (Kelsen, 1959). They can be formal or informal; either way, norms are essential for guiding behaviors and interactions. Following this logic, if international networks share an understanding of what ought to be done to defend cultural rights, while transnational networks share an understanding that is demonstrably different, this opens up the possibility for both ideological and actual conflicts—most notably between people who claim “universal” cultural rights, and states that ultimately must defend them. In addition, it opens up the possibility for conflicts between states.
Moreover, it is important to understand the relationship between norms and networks because, in so far as cultural rights can be understood as “universal” rights, we must ask the extent to which these rights are truly universal—that is, do all humans seek the same kinds of rights to the same definitions of culture? In this era of globalization, especially—an era typically characterized as an increased flow of people, products, and ideas across political and geographic borders—old ties are unraveling between cultural identity and geographic place (Hurrell, 2007). Taking into consideration the growing “anxiety of globalization” that cultural identities have begun to fragment, dissolve, or even disappear (see Singh, forthcoming 2009), it is important to confront the question of whether every human being may claim rights to cultural identity, regardless of citizenship or socio-economic status, or if only the time-honored Westphalian state has the right to draw boundaries around cultural similarity and difference. If, then, the right to claim one’s own cultural identity is indeed universal, how do states face the challenge of respecting these rights, while still fostering a common identity and sense of cohesion among its own citizens (Hurrell, 2007)? Where should we strive to draw boundaries around this “universal” human right to particular cultural identities—at the local level, at the global level, or only at the borders of state?
METHODOLOGY

Method

In the empirical chapters to follow, this thesis will employ the case study method. Specifically, this thesis will apply the case study method of structured, focused comparison to two types of global networks that negotiate norms of “universal” cultural rights. George and Bennett (2005) describe the case study method of structured, focused comparison as follows: “The method is ‘structured’ in that the researcher writes general questions that reflect the research objective and that these questions are asked of each case under study…The method is ‘focused’ in that it deals only with certain aspects of the historical cases examined” (p. 67). In this thesis, the general question asked across all cases is whether who negotiates norms of cultural rights within global networks affects who stands to benefit from “universal” cultural rights. In addition, this thesis does not try to encompass all phenomena of these cases; rather, it focuses primarily upon the tactics of negotiation employed by these global networks. For these tactics illuminate who was, and who was not, involved in the process of norm negotiation, which are relevant details for building theory on how to identify and possibly resolve conflicts between different understandings of cultural rights during the process of norm negotiation itself.

Conceptual Definitions

Krasner (1983) describes norms as “standards of behavior defined in terms of rights and obligations” (p. 2). These standards of behavior can be formal or informal, written or unwritten, and can be negotiated by any number of actors. According to Little and Smith (2005), what sets norms apart from other standards of behavior, such as rules
and principles, is that norms are “morally binding regardless of consideration of narrowly defined self-interest” (p. 85). When people part company with a norm—for example, by targeting civilians during wartime—they can face sanctions that are either social or legal, depending upon the formality of the norm.

In the realm of international relations, Goertz and Diehl (1992) argue that norms are “important in setting the expectations and, therefore, the behavior of states” (p. 635). In their research on the “life cycles” of norms, Finnemore and Sikkink (1998) argue that states will adopt and adhere to norms for a variety of reasons, based either upon a sense of moral obligation or upon a state’s self-interest. This suggests a departure from Little and Smith’s (2005) argument that norms are morally binding “regardless of narrowly defined self-interest” (p. 85); or, at least, that when states adopt norms based upon self-interest, that self-interest is not so narrowly defined that it conflicts with the self-interests or moral obligations of other states. Drawing upon this conceptual framework, this thesis defines norms of cultural rights as shared expectations of all states in defending “universal” cultural rights.

This thesis explores two types of global networks that negotiate norms of cultural rights: international and transnational. The international network consists primarily of states that are autonomous in their relations with each other and sovereign over domestic constituents. Official representatives of these states come together in a common locale, such as international conventions, to coordinate common concerns or different interests. By contrast, the transnational network consists primarily of non-state actors that include “research and advocacy groups, local social movements, foundations, the media, churches, unions, intergovernmental organizations, and parts of local governments”
These actors share struggles and common concerns, but are physically separated by political and geographic borders. Consequently, while international networks share ideas and coordinate their concerns through convening regularly in a common locale, transnational networks undertake the same activities either through information networks or through meetings in multiple locales. At the same time, members of transnational networks also seek representation at the conventions of international networks. While these two types of global networks differ primarily in how they coordinate their concerns, they share a common purpose: to create norms that change or “set the expectations and, therefore, the behaviors of states” (Goertz and Diehl, 1992).

To negotiate norms of cultural rights, these two types of global networks employ similar negotiation tactics. In the empirical chapters of this thesis, I will deploy a framework of negotiation tactics based upon the research of Singh (2008), focusing in particular upon the three tactics of venue-switching, coalition-building, and issue-framing. These frames serve as the intervening variables of this thesis, as they illuminate who participates in the negotiation of norms. More specifically, they approximate who is speaking, what is said, and to whom. In the case study of UNESCO, for example, the coalition that venue-switched from the WTO, a trade organization, to UNESCO, a culture organization, had at first used the frame of the “cultural exception”, but then switched to “cultural diversity”. Such tactics do not happen by accident; they are employed intentionally by actors to affect outcomes to their ultimate benefit.

As defined by Singh (2008), frames refer to a “mental shortcut conceptualized usually as a powerful set of words or a visual that provides a particular slant to the issue
in question” (p. 49). These frames tend to employ short, simple messages, be they words or images, to give meaning to complex issues. Frames can be likened to a form of advertising; in the context of negotiations, actors create frames to convince others to “buy” their argument on a particular issue. In a study of patent rights negotiations, Odell and Sell (2006) illustrate that possible changes to the patent rights regime for pharmaceutical were framed as the threat of death, on the one hand, and the threat of thievery on the other: “Patent rights should be upheld because it is wrong to steal. Alternatively, patent rights should be relaxed to prevent unnecessary deaths” (p. 87). As the empirical section of this thesis will show, frames regarding both culture and rights are no less extreme and can be, by extension, quite powerful in affecting outcomes.

Venue-switching concerns “the ability of actors to shift the venue for a negotiation to a place or organization most conducive to their interests” (Singh, 2008, p. 52). This tactic is similar to venue-shopping and forum-shopping, explored by public policy literatures such as those of Baumgartner and Jones (1993). Singh (2007) argues that because globalization has brought into the global arena a greater variety of actors than just states, there are stronger linkages among global issues of trade, security, culture, and so on and a greater number of venues to undertake negotiations. Consequently, the various actors that inhabit the global arena—states, transnational corporations, nongovernmental organizations, et cetera—select venues not because there is no other option, but because a particular venue is a better option.

Lastly, coalition-building refers to the partnering of parties within global networks to achieve a common purpose, allowing members to combine their resources and become more powerful than if each had acted alone. Parties tend to vary in their
relative power and influence within the coalition, yet work together in defining a
particular issue. Singh (2008) notes a variance in types of coalitions: “The types of
ccoalitions in a diffusion of power scenario are different from those in the concentration of
power ones” (p. 58). In the case of a concentration of power, stronger actors are in a
position to inflict their preferences upon weaker actors; whereas in the case of diffuse
power, weaker actors are often able to get their way.

**Operational Definitions**

To locate the independent variable of my thesis, global networks, I will look for
networks of actors that attempt to influence state-level policy through the negotiation of
norms. Specifically, I will locate these networks as actors that come together voluntarily
through conferences, meetings, and information networks through which norms are
negotiated. I will locate the variation in the independent variable within the variation in
the types of actors within each network: international networks primarily include state
actors, or official representatives acting on behalf of state governments. By contrast,
transnational networks primarily include nongovernmental organizations, academia, and
religious organizations, among other non-state and civil society actors.

To locate the dependent variable of my thesis, norms of cultural rights, I will
evaluate documents that these global networks have produced, both during the process of
norm negotiation, and as final outcomes of the norm negotiation process. Examples of
documents produced during the negotiation process including meeting reports, media
coverage, websites, and secondary literatures that covered the events in question.
Examples of documents that were produced as final outcomes include conventions,
treaties, and other legal agreements, or official reports, opinion pieces, and so on,
composed on behalf of global networks to state governments or the general public, in the case that no legal agreement is reached. In the case that a pluralist norm is produced, the language of universal rights connect to states. In the case that a solidarist norm is produced, language of universal rights connect to people who make claims to rights or who instigate the negotiation of norms.

**Empirical**

The first empirical chapter of this thesis, chapter three, will examine tactics employed by the international network to negotiate norms of cultural rights. These tactics are venue-switching, coalition-building, and issue-framing. The international network selected for this case study is the United States Educational, Scientific, and Cultural Organization (UNESCO), an international organization consisting of Member States, but which also nominally involves independent experts, nongovernmental organizations, and other civil society actors in the negotiation of norms. The specific UNESCO norm I will evaluate is *UNESCO’s Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, which was signed into agreement at the UNESCO General Assembly in October of 2005. As chapter three will demonstrate, actors within this type of network tend to negotiate pluralist norms of “universal” cultural rights.

The second empirical chapter of this thesis, chapter four, will examine the same negotiation tactics employed by the transnational network to negotiate norms of cultural rights. The first case study focuses on the Pimicikamak Cree Nation, an indigenous community based in Manitoba, Canada. This community has joined transnational networks including the United Nations Working Group on Indigenous Populations, and other religious, academic, environmental organizations, in order to defend their cultural
rights. The second case study focuses on the Representative Council of Black Associations, or *Le Conseil Représentative des Associations Noires* (CRAN). This lobbying organization seeks to represent French citizens of African and Caribbean descent who arrived in France primarily during the last century, and who typically are marginalized within mainstream French society. As both of these cases demonstrate, actors within this type of network tend to negotiate solidarist norms of “universal” cultural rights.
CHAPTER 2. Literature Review

The first section of this literature review examines historical understandings of universalism and particularism, which are rooted in Platonic philosophy, Christianity, the Enlightenment, and Nationalism. As this portion of the literature review makes clear, concepts of universalism and particularism have evolved over time, although these concepts have not necessarily improved. For claims to universalism historically have accompanied practices of oppression and exclusion, both within and across different societies. As such, dominant powers have not succeeded in realizing universalism; rather, they have only managed to “universalize” their particular worldviews through aggressive and coercive means, such as the Crusades and colonialism.

The second section examines contemporary understandings of universalism, and how universalism is attempted peaceably—for example, through the free market and the liberal state. Ideally, these social systems coordinate the interests of all who participate, regardless of differences in cultural background. However, as this second portion of the literature review shows, these attempts also run the risk of particularism posing as universalism, as administrators of the free market and liberal state tend to build their own biases into these “universalizing” systems. Together, these two sections on historical and contemporary understandings demonstrate not only the difficulty in realizing universalism, but also that notions of universalism are deployed as a kind of decoy for the assertion of particularism, even where “universal” rights are concerned.

The final two sections examine processes of norm construction and diffusion within international and transnational networks; these networks are the primary systems
through which a mixture of historical and contemporary understandings of universalism is deployed through the negotiation of “universal” norms.

**Historical Understandings of Universalism and Particularism**

Laclau (2002) presents three historical understandings of the relationship between universalism and particularism, each of which severs the universal from the particular, sets them in binary opposition, and privileges the universal over the particular. The first understanding, which is an artifact of Platonic philosophy, locates this binary within each man, whose mind is both rational and irrational. There is no outside mediator who can reconcile this relationship, consequently, the universal and particular come together only through Man’s own rationality. More specifically, the irrational, subjective particularities of Man negate themselves in order to achieve the rational, objective universal. Alternatively, the particular negates the universal through the assertion of its own particularity; that is, the irrational and subjective self overpowers the universal—the self that is rational and objective.

The second understanding is related to Christianity, in which rationality does not play a role. The universal-particular binary is located along a temporal plane, whereby the particular represents the dawn of time, and the universal represents eternity. God mediates this relationship through the logic of incarnation, that is, some humans are endowed with divine knowledge, others are not—either way, Man cannot comprehend God’s choosing of why or when this will happen. Laclau (2002) argues that the mysterious logic of incarnation came to have a profound influence upon the European intellectual tradition: “that of the privileged agent of History, the agent whose particular body was the expression of a universality transcending it.” (p.124) In effect, Christianity
rendered universalism a kind of blessing that could be bestowed upon humans, but which humans could not bestow upon themselves.

The third understanding is related to the Enlightenment. In two key ways, this historical understanding of the universal-particular relationship has fused the viewpoints of Platonic philosophy and Christianity. First, the universal-particular binary is still located along a temporal plane, although now the particular represents past mistakes of Man, and the universal, the possible future. Second, the rationality of Man has re-entered this relationship to replace God in mediating between the two poles. However, contrary to the view of Platonic philosophers, not every man has the ability to navigate between his own irrational particularism and the rational universal; rather, only the intellectual elite of the European Enlightenment are thought to personify the universal.

As Wallenstein (2006) explains, the idea that Europeans were capable of universalism was used for centuries to justify European imperialism; specifically, the Enlightenment’s rationality-based notion of universalism had justified colonialism, just as Christianity’s divinity-based notion of universalism had justified the Crusades. According to Laclau (2002), resistance of other societies against European imperialism was presented not as “struggles between particular identities,” but as a product of certain people expressing “their incapacity to represent the universal” (p. 125). Notably, the notion that certain people could not achieve the universal extends further back than medieval and modern Europe. In ancient Greece, for example, Plato and his contemporaries also maintained that human beings could achieve universalism through rationalism. However, women and slaves were not considered full-fledged human beings, and therefore were not considered capable of rational thought (Nussbaum, 1993).
Taken together, these historical understandings of the relationship between universalism and particularism reveal an important point—namely, that claims to universalism have, throughout history, led to practices of oppression and exclusion. These practices have been carried out not just across societies, as in the case of Crusaders who voyaged across Continental Europe to defeat supposed “particularists” of Asia Minor, but also within societies, as in the case of the City of Athens, where slaves and women were prohibited from participating in political and economic life, and likely suffered abuses worse than this. Regardless of whether universalism is real or possible among all human beings, painful remembrances of “universalists” repeatedly pushing aside certain people have, for many, debased the notion of universalism as “[an] old-fashioned, totalitarian dream” (Laclau, 2002, p. 248). From this view, the universal cannot be achieved, simply because there are no universals—there is only a dominant power that attempts, and sometimes succeeds, in “universalizing” its own particularity.

Not surprisingly, the conviction that claims to universalism are nothing more than a pretense for pushing people aside—that is, for denying certain people their rights—has paved the path toward a preference for particularism, which is often equated with culture. In the realm of legal anthropology, Cowan (2006) has recognized a range of discourses that express our understandings of how rights and culture intersect. A first understanding echoes the Enlightenment’s notion of universalism, as explained by Laclau (2002)—that culture, like particularism, stands in direct opposition to universalism. From this perspective, culture is the manifestation of beliefs, values, and traditions standing in the way of universal rights. Similar to Laclau, Cowan (2006) argues that this understanding
of culture versus rights—in other words, particularism versus universalism—has been supplanted by a second understanding; namely, the right to culture.

That culture is a right, rather than a roadblock to rights, is not an altogether contemporary concept. Turning again to the history of Europe, Cowan (2006) maintains that culture as rights emerged as a political ideology following the French Revolution. As such, the politics of French “civilizational hegemony”, which had accorded legitimate rule to a top-down, God-given monarch, gave way to the politics of German “romantic particularism”, which accorded legitimate rule to a bottom-up, self-determined citizenry occupying a specific geographic place (p. 10). This new ideology of romantic particularism marked the dawn of Nationalism, which, according to philosopher Johann Gottfried Von Herder, emphasized “the holistic integrity of each distinct people, privileging the communal forms—language, traditions, and culture—through which its spirit was expressed” (p. 10). As such, each newly formed nation-state of the 19th Century enjoyed the right to its own cultural identity.

More recently, the right to culture has reemerged in progressive politics of the 20th Century. These new “cultural rights” are intended primarily for people whose cultural identities tend to part company with national identities—for example, the cultural identities of immigrant and indigenous populations, Here it is important to note that many scholars have taken for granted that cultural rights, as we have come to understand them in the 20th Century, always emancipate and equalize human beings. For claims to these rights often result in the redistribution of material and political resources to people whom “universalists” or dominant powers (i.e. states) have historically pushed aside (Fraser, 1997). However, Cowan (2006) makes clear her skepticism toward this assumption of
cultural rights, as “culturalist claims might be used just as easily for reactionary as for progressive politics” (p. 10).

Romantic particularism has indeed inspired sentiments of ethnic, racial, and religious superiority; a familiar historical example is Richard Wagner’s nationalistic attacks on Jews for not assimilating into German culture during the 19th Century (Wagner, 1850). At the same time, romantic particularism of the 20th and 21st Centuries has inspired these sentiments, too—even among groups that historically have been marginalized by greater powers or states. Forsythe (1999) points to a host of examples such as “Serb nationalism, Hutu dominance, and Hindu or Islamic supremacy” (section 2). And yet, sentiments of ethnic, racial, and religious superiority can just as easily be located at the other ends of these three spectrums: “Croat nationalism, Tutsi repression, or Christian intolerance”. Forsythe argues that these familiar assertions of particularity demonstrate an important difference between “wanting to preserve one’s group identity or culture and being willing to attack or otherwise abuse those in the ‘other’ category” (section 2); arguably, such willingness to attack or abuse people in the name of culture or particularism does not set the stage for the emancipation and equalization of human beings. And, as Forsythe aptly points out, those who persecute people for belonging to the “other” category may even belong to the same cultural group as those they have persecuted—for example, women in African countries may oppose the practice of female genital cutting, even while elders of their own communities support it.

And so, these historical reviews of universalism and particularism reveal that claims to “particularism” and cultural rights face the same problem as do claims to “universalism” and human rights; namely, these claims can lead to practices of
oppression and exclusion—even while these claims are argued with the beautiful and seemingly benevolent language of universalism, culture, and rights. This leads, of course, to the ultimate question: is it possible to realize human rights, while also realizing the right to cultural difference?

**Contemporary Understandings of Universalism and Particularism**

Today, centuries after Crusaders have set down their spears, and decades after Western powers have done away with colonialism, notions of universalism continue to persist as a prime justification for staging interventions, both across and within different societies (Sötzl, 2000). As Kessler (2000) has suggested, these new notions of universalism do not necessarily manifest themselves in any practice as violent as ethnic cleansing or religious warfare; rather, these notions can manifest themselves in far-reaching, God-like social structures such as the liberal state, which ideally regards all citizens as “equal, identical in formal rights and substitutable for one another in their different identities” (p. 936). A second example is the free market, which also provides an “impersonal measure against which all individuals are to be humanly and morally evaluated” and exhibits certain “sacred principles” such as “no favoritism” and “formally equal treatment” (p. 936). Finally, a third example are the social sciences, particularly anthropology, as its concepts of culture and its appreciation for the diversity of cultures have made it possible to simultaneously contemplate “both the unity and the diversity of humankind—not as some sort of intriguing paradox but as two aspects of the one reality, two sides of the same coin” (p. 917).

These examples of political, economic, and cultural interventions point in the direction of a different kind of “universalism”—a universalism that places emphasis not
upon forced conformity, but upon equality of treatment, access, and opportunity, despite the great diversity of human experience. For ideally, the liberal state and the free market will realize the interests of all those who participate, just as the anthropologist will uncover the interests of those she or he observes. However, Kessler (2000) cautions that these contemporary attempts at universalism can run the risk of particularism, too. For even the most well-intentioned administrators of the state and the market, among others, frequently fail to take into account their own political, social, and cultural biases that become built into systems of governance. As a result, practices of exclusion and oppression continue, albeit in subtler and more systematic forms.

Notably, systems of governance have been set up in order to avoid repeating these painful parts of the past—namely, the violent versions of exclusion and oppression based upon judgments of ethnicity, race, religion, or gender. For example, states unwilling to revisit the horrors of the First and Second World Wars have banded together as international organizations to coordinate states’ interests, including those regarding “culture” and human quality of life. This coordination is undertaken largely through the negotiation of universal norms, which codify standards for state-to-state conduct, as well as states’ treatment of their own citizens. Typically framed in a language of rights (human rights, social rights, economic rights, cultural rights, and so on), these universal norms attempt to carve out a common core of values across the human race, even while cultural differences manifest themselves in great varieties of languages, dress, and traditions.

Considering Kessler’s claim that biases can be built into peaceable systems of governance, even when the language of “universalism” is deployed, it is important to ask
what standards for governance these universal norms attempt to codify. What do these
norms look like when created by international networks, and what do they look like when
created by transnational networks? Do “universal” norms actually support universal
rights? The next sections of this literature review examine various definitions of norms,
the processes through which international networks create norms, and the processes
through which transnational networks do the same.

**Norms: The New Attempt at Universalism**

Scholars of international relations have defined norms in various ways. Kelsner
(1959) presents a general concept of the norm, which is an expectation, allowance, or
recommendation that people behave a certain way under certain circumstances. Krasner
(1983) and Goertz (1992) have applied this general concept of the norm to the realm of
international relations, emphasizing its importance in determining expectations and
behaviors of states. Indeed, if norms enable states to have expectations of each other and
for citizens to have expectations of state, norms offer the possibility for change through
communication, deliberation, and negotiation among these different actors, rather than
through coercive and violent means alone. As a former U.S. Ambassador to the United
Nations (in)famously said of a former U.S. president, “He often says that life would be a
lot easier if it were a dictatorship. But it's not, and he's glad it's a democracy” (Bumiller,
2003). Perhaps with norms there is hope, after all, for wielding the power of ideas to
affect change instead of wielding the power of the sword. Finnemore and Sikkink (1998)
note that this possibility is, in fact, reflected in recent scholarship on International
Relations, as empirical research of norm theory “documents again and again how
people’s ideas about what is good and ‘should be’ in the world become translated into
political reality” (p. 916). Of course, this begs the question—how far across the world can a norm of “should be” reach? Can norms actually embody universal values, or are norms negotiated by “universal” networks merely to privilege certain states or certain members of civil society?

Finally, Bull (1966) takes these concepts of norms one step further, distinguishing between two types of norm creation in pluralist and solidarist societies. In pluralist society, dominant norms are negotiated by states and depend directly upon the consent of states, such as in the case of an international network. In solidarist society, norm negotiation is open to a wider range of actors, both states and non-state groups, such as in the case of a transnational network. According to Hurrell (2000), a student of Bull, in solidarist society there is “an easing of the degree to which states can only be bound by rules to which they have given their explicit consent—a move from consent to consensus” (p.10). This move to solidarism marks, according to Buzan (2004), a move from “international” to “world” society, which ranks the needs of an assumed common humanity above the needs of any particular state. As Hurrell (2007) has noted, global politics include elements of international society as well as world society, pluralism as well as solidarism, in regard to how norms are negotiated. The next sections will expound upon these means of creating norms within two different global networks—the international and the transnational. To borrow the language of Finnemore and Sikkink, these sections on international and transnational networks detail two different networks that, in regard to cultural rights, attempt to translate what “should be” into political reality.
Norms and International Networks

Finnemore and Sikkink’s research on the life cycles of norms shed light upon the reasons why states adopt and adhere to norms; in other words, the reasons why states attempt to translate the “what should be” into a political reality. This translation is traced in three stages. The first stage, norm emergence, is characterized by conviction; transnational norm entrepreneurs convince norm leaders (i.e. states) that something must be changed. Once a critical mass of states is reached, norm cascade occurs. During this second stage, more states adopt the norm, and quickly—although motivations are not always clear. Finnemore and Sikkink suggest that these “norm follower” states are motivated by the need for conformity, legitimacy, sense of worth, or a combination of the three. In the final stage, norm internalization occurs. Once norms are internalized, they are no longer a matter of broad public debate; for example, “Few people today discuss whether women should be allowed to vote, whether slavery is useful, or whether medical personnel should be granted immunity during war” (p. 895). Finnemore and Sikkink make clear that not every norm completes this cycle; a norm’s adoption depends upon factors such as the prominence of norm leaders, the legitimacy of norm followers, the similarity between new and old norms, whether the norm has “intrinsic” appeal, e.g. legal equality of opportunity, and lastly, it depends upon the current state of the world, e.g. a depression can lead states to look for new norms, or the end of a war can lead states to adopt the victor's norms.

Finnemore and Sikkink’s life cycle of norms describes the pressures and processes—both international and transnational—that result in a state’s adoption of norms. Following the logic of this framework, states adopt norms for two basic reasons.
The first reason is related to Singh’s (2003) description of preponderant power, which he traces to the philosophy of Thucydides: “The strong do what they can and the weak suffer what they must” (p. 464). When applied to the life cycle of norms, the preponderance of state power explains how strong states, the norm leaders, secure the cooperation of weak states, the norm followers—through “suasion, incentives, or sanctions” (Singh, 2002, p. 464). In other words, while a norm may not complement a state’s morality or ideology, that state will nevertheless adopt the norm toward a specific end: the social or material gains of being accepted into international society (Buzan, 2004). Again, following the logic of this framework, there is a second basic reason why states adopt norms. While “norm follower” states may adopt a norm against its values or interests, it may also adopt a norm precisely because of its values and interests; that is, a norm has intrinsic appeal. In sum, while this life cycle of norms demonstrates that norms can emerge, diffuse, and become adopted by states because that norm appeals either to a state’s values or interests, it does not account for the potential norm negotiations to transform these values or interests. The next section on transnational networks shed light upon how states’ values or interests can be changed.
Norms and Transnational Networks

At the same time International Relations scholarship has revived its interest in norm theory, it has also come to recognize the non-state actor as a political force of the post-Cold War era. These non-state actors include civil society, social movements, nongovernmental organizations, foundations, academia, and the media, among others. When these non-state actors converge around common principles or problems, such as education or the environment, they form an advocacy network that cuts across political boundaries of states and can have a significant influence upon policy development, at the state level or otherwise. Keck and Sikkink (1998) examine the role these networks play in the creation and dissemination of norms, arguing that they offer “channels for bringing alternative visions and information into international debate” (x). These networks are “voluntary, reciprocal, horizontal”, and are enabled greatly by technological and cultural change (p. 214). In effect, these transnational advocacy networks possess the potential to challenge the “taken-for-granted” status of a norm’s extant power structures, such as those between a state and its citizens. Consequently, in the case that a norm that has gained widespread acceptance or become internalized on a global scale, such as the norm of universal cultural rights, these cross-border networks can offer an alternative vision and voice to those who experience the absence or a misapplication of a specific norm within the borders of their own states.

Keck and Sikkink point to a number of strategies that transnational networks employ in educating the public and pressuring states: information politics, which is the provision of information that the public; symbolic politics, which employs the same empathy-inducing tactics as issue-framing; leverage politics, which is similar to
coalition-building in that a weaker actor in a network calls upon a stronger actor; and accountability politics, which holds politicians accountable for what they have promised they have already done. Keck and Sikkink make a further point about transnational networks: that they are decisive in the “earlier stages of norm emergence and adoption, characterized by intense domestic and international struggles over meaning and policy” (p. 211). When a dense and strong transnational advocacy network takes initiative in the negotiation of norms, it can have profound effects on the receptiveness of states.
CHAPTER 3. International Networks and Pluralist Norms

Case Study #1: UNESCO

This chapter introduces a case study to demonstrate that international networks tend to negotiate pluralist norms of “universal” cultural rights, which privilege the cultural rights of states. The next chapter will introduce two case studies to demonstrate that transnational networks tend to negotiate solidarist norms of “universal” cultural rights, which privilege the cultural rights of people. Taken together, these chapters on international and transnational networks support the central argument of this thesis—that norms of “universal” cultural rights tend to privilege either states or people, depending upon the network that negotiates the norm.

The case study this chapter will investigate is UNESCO’s *Convention for the Protection and Promotion of the Diversity of Cultural Expressions*, a legal norm that the majority of UNESCO’s Member States signed into agreement in October of 2005. As the name of this *Convention* makes clear, UNESCO’s Member States have negotiated a norm regarding the diversity of culture(s); more precisely, these Member States have negotiated a norm regarding the diversity of cultural *expressions*, a turn of phrase that speaks specifically to UNESCO’s preoccupation with cultural products such as French film, Turkish television, and Malawian music. Such are examples of “dual nature” products, which possess both cultural and economic value (Voon, 2007), and which move across the borders of states to populate the global marketplace.

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6 148 of 191 Member States voted in favor of the Convention. The U.S. and Israel were the only Member States that voted against it; six Member States abstained from voting.
Because this case study will evaluate this norm through the lens of “universal” cultural rights, we must ask the question: according to UNESCO’s Convention, is the right to produce, distribute, and consume these cultural expressions truly a universal right? By referring only to the official text of the Convention, one could answer this question either way. For example, one Guiding Principle of the Convention has interwoven language of human rights, signifying that the freedom to produce, distribute, and consume these cultural expressions is indeed a universal right. In addition, this Guiding Principle specifies that the “ability to choose” and “freedom of expression” are necessary conditions for protecting and promoting cultural diversity:

Article 2:1: Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed.

At the same time, a second Guiding Principle of the Convention has interwoven language of state rights, rather than human rights, signifying that the freedom to produce, disseminate, and consume these cultural expressions—or, at least, to regulate these cultural expressions—is the sovereign right of states. Although this second Guiding Principle does not specify that a state’s adoption of regulatory policies is necessary for protecting and promoting cultural diversity, it does specify that the adoption of these policies is, nevertheless, the sovereign right of the state:

Article 2:2: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.
These Guiding Principles reveal subtle differences in language, yet they mark significant differences in objectives. What were the objectives of UNESCO Member States that negotiated this *Convention* at the crossroads of human rights, state rights, and culture? Bringing this question to bear on norms of “universal” cultural rights, this case study will strip away the official text of this *Convention* to expose how this *Convention* came into being. This deeper layer of analysis will focus upon three tactics that UNESCO’s Members States deployed in negotiating this norm: coalition-building, issue-framing, and venue-switching (*see* Singh, 2009), as a means of understanding who participated in negotiating this norm, and how this norm was negotiated.

By analyzing how UNESCO’s Member States deployed these tactics, this chapter will demonstrate that international networks tend to negotiate pluralist norms of “universal” cultural rights, which privilege the cultural rights of states. When applied to the case study of the *Convention*, this means that UNESCO’s Member States have not negotiated a “universal” right to culture. Instead, they have negotiated the right to universalize each Member State’s particularity within its respective territory—that is, the right to universalize what it means to be “French”, “Turkish”, or “Malawian”, even while the borders of these Member States comprise a diversity of cultures within.

**UNESCO: A Brief Background**

The founding of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) took place alongside the birth of the United Nations (UN) during the aftermath of the Second World War. Although a primary aim of the UN was to enforce its peacekeeping mandate with more effective measures than those of its predecessor, the League of Nations, the UN’s establishment of UNESCO as a specialized
agency demonstrated a continued confidence in the power of norms—and not merely military force—to change the world for the better. Based upon the belief that human knowledge leads to understanding, and that understanding leads to peace, UNESCO’s Constitution opens with the stated objective to build peace “in the minds of men”.

When Member States of UNESCO agree upon ways to build this peace, they can either draw up a *Convention*, which sets forth norms that are legally binding among signatories; a *Recommendation*, which defines norms that are not legally binding, but which Member States are invited to apply within their respective territories; or a *Declaration*, which also defines norms that are not legally binding, but which carries the currency of “universal principles” and the expectation that Member States will still apply this norm within their respective territories. As such, UNESCO Member States negotiate a variety of norms, ranging from optional to obligatory, regarding Member States’ own treatment of culture.

**UNESCO: Whither Norms of Culture?**

Over the years, UNESCO Member States have negotiated a number of norms regarding their own treatment of culture. Perhaps the reason(s) why Member States continue to negotiate these norms are not entirely or easily understood, as for UNESCO the universal value of culture has always been self-evident. However, a historical analysis of UNESCO Director General Reports, conducted by Stenou and Keitner (2004), has shed some light on the matter. In short, just as the practical priorities of Member States

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have shifted or expanded, so too have their concepts of culture and their reasons for negotiating new norms. Through a brief review of these changing priorities—decolonization, development, and democratization, among others—as well as these concepts of culture, this next section will set the stage for understanding how UNESCO Member States’ priorities have evolved, and how these priorities eventually guided them in the direction of the 2005 *Convention*.

**Table 1: UNESCO Member State Priorities & Culture: 1947-present**

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Goals</th>
<th>Attempted how?</th>
<th>Culture linked to…</th>
</tr>
</thead>
<tbody>
<tr>
<td>post-WWII: From 1947</td>
<td>to establish peace, tolerance, and understanding between nations</td>
<td>by increasing access to popular or &quot;enlightened&quot; education</td>
<td>intellectualism, historical information, artistic production</td>
</tr>
<tr>
<td>Decolonization: From the 1950s</td>
<td>to recognize unique cultures &amp; histories of decolonized nations, to resist ideological battles of the Cold War</td>
<td>by expanding definition of culture from artistic production to encompass “identity” itself</td>
<td>political independence, freedom from cultural imperialism</td>
</tr>
<tr>
<td>Development: From the 1970s</td>
<td>to empower states politically &amp; economically through endogenous or “home-grown” development</td>
<td>by concretizing expanded definition of culture through administrative &amp; financial support</td>
<td>self-determined development, possibilities for economic growth</td>
</tr>
<tr>
<td>Democratization: From the 1980s</td>
<td>to recognize &amp; to provide equal opportunity to minority cultural groups</td>
<td>by emphasizing tolerance, as well as the need to establish and enforce legal rights</td>
<td>indigenous groups, racial minorities, dual identities of migrants</td>
</tr>
<tr>
<td>Globalization: 1990s-present</td>
<td>to preserve &amp; promote cultural expressions in the face of rapid economic and technological change</td>
<td>by framing cultural goods as something more than mere consumer goods</td>
<td>global markets, cultural products and services, security</td>
</tr>
</tbody>
</table>

Source: This table was constructed by the author based upon *UNESCO Priorities & Cultural Diversity: 1947-present* (Stenou and Keitner, 2000).
When UNESCO was established following the Second World War, culture was associated primarily with artistic production, intellectualism, and historical preservation. Expectedly, a reigning priority of postwar reconstruction was to foster respect and tolerance between states, each of which was believed to embody a single and unique national identity. In accordance with UNESCO’s high-brow definition of culture at the time, this mutual respect and tolerance was pursued through “enlightened” education about visual, musical, and literary arts, as well as the actual circulation or exchange of these artifacts across the borders of states.

A shift in the concept of culture occurred during the early years of the Cold War, which were also the primary years of decolonization. Culture became synonymous with not only national identity, but also a nation’s right to independent rule. Because great powers of the Cold War competed with each other for the alliances of smaller, less powerful nations, and, because UNESCO also sought the membership of more and more states, it again was important to respect and acknowledge cultural differences only at the borders of states.

As newly independent states began to rebuild their own institutions, culture also became connected to endogenous or “home-grown” development. In this regard, culture encompassed not just national identity, national independence, or a set of aesthetic expressions; it also formed the basis for political and economic development that was both “liberating” and “empowering” (Stenou and Keitner, 2000, p. 11). Therefore, to respect different cultures across the world was to respect the different choices states made as they paved their own paths to development.
The barriers of cultural difference finally broke through the borders of states as UNESCO turned toward the goal of democratization. For example, the Director-General Report of 1983 suggested that cultural diversity should be managed within countries, not just between them; the Report made reference to societies becoming more “multicultural” and migrant workers living in “two different cultures” (Stenou and Keitner, 2000, p. 11). As such, a spotlight was cast upon less powerful people within states, not just upon less powerful states themselves.

Also during this time, a now-famous definition of culture emerged from the UNESCO World Conference on Cultural Policies, held in Mexico City in 1982: “The set of distinctive spiritual, material, intellectual, and emotional features of society or a social group. In addition to art and literature, it encompasses lifestyles, basic human rights, value systems, traditions, and beliefs” According to Bernier (2003), the many dimensions described here comprise the most comprehensive definition of culture to date. Nearly twenty years later, this definition of culture folded into the final text of UNESCO’s Universal Declaration on Cultural Diversity of 2001, the precursor to the 2005 Convention.

Most recently, UNESCO has approached questions of culture in response to the processes of globalization—the increased flow of people, products, information, and ideas across the borders of states. To follow is an adept description of the effects that globalization is feared to have upon culture:
The more recent phenomenon of globalization has also had a deep impact on cultural values. While some aspects of globalization, such as greater access to information, have had liberating effects, the consumption-oriented, materialist pattern of development promoted by globalization has systematically eroded notions of equity. Small communities and indigenous groups have lost a great deal of their traditional knowledge and wealth in the onslaught of a culture of materialism and lopsided developmental priorities adopted by governments all over the world. Globalization has had an adverse impact on the Economic, Social, and Cultural rights of people, especially of the vast majority of the world’s poor (Circle of Rights, 2000).

And so, according to the UNESCO we know today, the negotiation of new norms has become necessary “to preserve and promote cultural diversity, in particular at the time when new global markets are being formed and the statute of cultural goods compared to that of ordinary consumer goods is being debated” (Stenou and Keitner, 2000, p. 4). This necessity was illuminated especially by the UNESCO Report Our Creative Diversity of 1995, as the Report established the frame of cultural diversity and named this condition a prerequisite for democracy and development. Furthermore, it shined a spotlight on the role of global media in diluting this diversity, and suggested that active steps be taken before to prevent this threat. These notions eventually led to the Universal Declaration on Cultural Diversity, which Member States unanimously signed in 2001, and the Convention for the Protection and Promotion of the Diversity of Cultural Expressions, which the majority of UNESCO Member States signed in 2005.

The next section of this chapter goes into deeper detail of the events that led up to the signing of these norms; specifically, it examines the negotiation tactics that Member States employed to establish the 2005 Convention. As this next section on negotiation tactics shows, Member States of UNESCO negotiated the Convention as a pluralistic norm of “universal” cultural rights, which privileges the cultural rights of states.
Negotiation Tactics

Suffice to mention that the ‘free traders’ of this debate are not necessarily interested in creating more choice for consumers but rather tend to promote monopolization. The ‘culture’ side, on the contrary, might have strong profit motivations of their own for creating red tape for its successful American competitors (Hahn, 2006).

Venue-Switching

Although the Convention was born at UNESCO in October of 2005, its conception took place within an entirely different international network—the General Agreement on Tariffs and Trade (GATT), the forerunner to the World Trade Organization (WTO). In September of 1986, GATT launched the Uruguay Round of trade negotiations, which concluded in April of 2004. The WTO website suggests that the Uruguay Round was the “largest negotiation of any kind in history”, as 123 countries took part in negotiating “almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments”.8

As those already familiar with the Uruguay Round are aware, the Uruguay Round nearly broke down over negotiations in the agricultural sector. Over the course of eight years of negotiations, however, a host of other trade-related issues arose, including anti-dumping, market access, the forthcoming WTO, as well as negotiations in the services sector. During the Uruguay Round, the necessity to negotiate formal agreements in the services sector became evident, as even in the absence of agreements, these services had

8 WTO Website. See: http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm
already been traded for years. This led to the General Agreement on Trade in Services (GATS), a treaty to which all WTO Members are signatories.

As the stage was set for the negotiation of trade in services, several countries supported the idea of a general exception under GATS for services related to national or cultural identity; these countries included Austria, Brazil, Canada, Egypt, India, Peru, Romania, and the Nordic countries (Voon, 2007). However, neither the European Union nor the United States supported this idea. Rather, the central concern for these leading Member States was trade in a particular services sector—the audiovisual sector, which includes television, radio, and film. In a nutshell, the U.S. pushed for cultural products in the audiovisual sector to be treated like any other product in a liberalized market, that is, free from trade restrictions such as subsidies and quotas. However, the European Union (EU) took quite a different stance. Just four years earlier, in 1989, the European Economic Community had introduced the Television Without Borders (TWF) Directive, requiring that each EU member country’s television programs include a 51% minimum of European content. This Directive received significant support from France (Singh, 2009). In opposition to this quota, the U.S. argued that the TWF Directive violated the Most Favored Nation (MFN) and National Treatment (NT) principles, which the WTO considers the two foundations of free trade.10

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9 GATS covers trade in services such as business, communications, construction, education, health, tourism, among others. For the full list of services sectors covered by GATS, see the WTO website: http://www.wto.org.

10 The Most Favored Nation principle stipulates that countries cannot normally discriminate between their trading partners. The National Treatment principle stipulates that imported foreign goods must be treated the same as domestic goods.
The U.S. was not the only voice that spoke up against the TWF Directive. According to Singh (2008), “In reality, very few states implemented this quota but the EU position was to try to enshrine this quota formally through GATS” (p. 127). Conceivably, the TWF Directive could have helped foster a common European identity; however, the Directive faced dissent from the European community itself: “Even member states objected that broadcasting was a cultural issue beyond the scope of the European Economic Community” (Singh, 2008, p. 125). As such, both economic and cultural arguments were advanced against the TWF Directive, from both outside the EU and from within. Although this pressured the European Economic Community to eventually soften the Directive with language that quotas should be met “where practical and feasible”, GATS negotiations still only concluded once both sides agreed to disagree (Voon, 2007). As such, the U.S. refused to acknowledge the special status of cultural goods, whereas several other Member States took the MFN exemption, and very few Member States scheduled commitments in the audiovisual sector.

Europe-led efforts to shelter cultural industries from international agreements were not restricted to GATS alone. Following what the Organization for Economic Co-operation and Development (OECD) considered to be a disappointing outcome on the Uruguay Round’s Agreement on Trade-Related Investment Measures (TRIMs), the OECD pursued negotiations on what would have become the Multilateral Agreement on Investment (MAI). Before these negotiations broke down in 1998, France had already withdrawn on account of wanting to include a general clause that would have restricted foreign direct investment in cultural industries. To France, to allow foreign direct investment in cultural industries would have likely interfered with cultural policies
designed to “promote cultural and linguistic diversity” (Singh, 2008, p. 142). The Canadian state, which on cultural matters typically aligns more closely with Europe with the U.S., also faced a dispute over cultural industries opposite the WTO. In May of 1996, the U.S. challenged four measures protecting Canada’s magazine industry, including restrictions on imports, an excise tax, postal subsidies, and differentiation between foreign and domestic commercial publication rates. The WTO’s dispute panel ruled that these measures had violated the GATT provisions of 1994.

Following their disputes with GATS, the OECD, and the WTO in the 1990s, and, in anticipation of the GATS negotiations of 2000, Canada and France seized the opportunity to switch venues to their own advantage in cultural trade. Because cultural goods and services possess both economic and cultural value (Voon, 2007), these European countries were able to play to the cultural side of the equation by seeking support at UNESCO instead. As Singh’s (2007) research has shown, the very countries that pursued the cultural exception, and then switched venues to UNESCO re-frame this exception as “cultural diversity”, are the same countries that dominate exports in the realm of cultural trade, Canada and France ranking high among them. While this indicates that these states were concerned not only with the economics of cultural trade, but also with culture itself, it still leaves open the question of whose culture was of central concern. Were Canada and France advocating for cultural diversity and cultural rights within their own borders, or only between borders of states?

11 Canada Library of Parliament Website. See http://www.parl.gc.ca/information/library/PRBpubs/prb9925-e.htm#
Issue-Framing

At the Cannes Film Festival in May of 1993, a few months before GATS negotiations concluded in December, French filmmaker Bertrand Tavernier voiced this criticism to U.S. filmmakers who had also attended Cannes to plead their pro-liberalization case: "Americans want to treat us the way they treated the Redskins! . . . If we are prudent, they will grant us a reservation; they will give us some Dakota hills; and if we stay nice, we might qualify for one additional hill . . ." (Rolatt, 1993). By creating a mental shortcut to this period in U.S. history, Tavernier effectively framed the U.S. push for trade liberalization as a U.S. push for cultural imperialism. While this statement by Tavernier did not develop into an established frame per se, it still is important to note that Tavernier had not meant that trade liberalization would claim as Native Americans as its victims; rather, the victims were meant to be France.

As France led the fight to keep audiovisual off the table during GATS negotiations in 1993, the country’s reluctance to schedule commitments was framed as the “cultural exception”, or exception culturelle. Being that a known supporter of free trade, Sir Leon Brittan, was responsible for leading these negotiations, the frame exception culturelle would likely not have inspired much support by itself. For the term “exception” implied, quite simply, that those who backed France’s fight were speaking out against trade, without also speaking out for culture. In other words, the frame negatively stated what film is not—that is, merely an economic entity—without also positively stating what film is—that is, a cultural entity, too. In the anti-E.U. camp, the U.S. had framed the same issue as “trade protectionism”, which was probably a more powerful frame for addressing questions of trade, the issue at hand at GATS.
Buchsbaum writes of the *exception culturelle*: “Perhaps because the term came to be associated with the stigma of French defiance, French officials and writers began using the arguably more neutral term of cultural diversity” (p.13). This switch to the frame of cultural diversity accompanied France and Canada’s switch to the venue of UNESCO in the late 1990s. By the time this switch occurred, the cultural diversity frame was already familiar within the walls of UNESCO, and so proved much more effective in garnering support within this international network. As an example of this familiarity, the book *Culture, Creativity, and Markets* (1998), authored by Lourdes Arizpe as part of UNESCO’s World Report Series, cleanly condensed the wide range of benefits that cultural diversity is believed to bring to society:

First, diversity is valuable in its own right as a manifestation of the human spirit. Second, it is required by principles of equity, human rights, and self-determination. Third, in an analogy with biological diversity, it can help humanity to adapt to the limited environmental resources of the world. In this context diversity is linked to sustainability. Fourth, it is needed to oppose political and economic dependence and oppression. Fifth, it is aesthetically pleasing to have an array of different cultures. Sixth, it stimulates the mind. And seventh, it can provide a reserve of knowledge and experience about good and useful ways of doing things (p. 18).

Not only was the cultural diversity frame already familiar at UNESCO, this frame was based upon similar concepts of another kind of diversity—biological diversity, or biodiversity.

Why was it effective to link cultural diversity to biodiversity? To start, scientists regard biodiversity as a rich resource for new possibilities, from curing diseases to creating new fuels. Cultural diversity is also regarded as a rich resource, albeit for mostly social rather than material purposes (Bernier, 2007). Within the biodiversity of the natural
world, bioprospectors search for unique and usable organisms; the growing popularity of this practice has raised questions not only of sustainability, but also the sharing of profits. By the early 1990s, developing countries had raised objections to developed countries’ greediness on both these accounts (Boykin, 2007). Not only were developed countries such as the U.S. reaping the profits of bioprospecting in African nations and other developing countries, their activities also were putting the natural biodiversity of these environments at risk. This troubled state of affairs led to the 1992 Earth Summit Convention on Biological Diversity, which set forth guidelines for guarding against the ecological risks of bioprospecting, and for sharing its monetary benefits.

Clearly, these concerns over biodiversity leading to the 1992 Earth Summit Convention in Rio de Janeiro, mirror several concerns over cultural diversity leading to the 2005 UNESCO Convention in Paris. Bernier (2007) describes very well how the conditions that lead to biodiversity have developed into a similar concept of the conditions that lead to cultural diversity: “Each culture develops and evolves in contact with other cultures. The preservation of cultural diversity thus implies maintaining and developing existing cultures while ensuring an openness to other cultures” (p. 2). As this chapter already revealed, UNESCO has long supported the exchange and circulation of “high art” artifacts and other expressions of culture, but this exchange and circulation have served the purpose of fostering respect and tolerance between states, not of transforming states’ cultures themselves. Today, the slow and steady circulation of a painting cannot match the viral influence of microchips, satellites, and optic cables in transmitting cultural meanings. Perhaps opponents of globalization fear that this circulation is happening far too fast. In the context of the UNESCO Convention, the link
between cultural diversity and biological diversity had been established by the International Network on Cultural Policy (INCP), a leading player in the negotiation of the Convention: “INCP made an explicit connection with the 1992 Convention on Biological Diversity framed in Rio de Janeiro” (Singh, 2008, p. 145). Just as bioprospectors were perceived as a threat to biodiversity and the equitable sharing of monetary and health benefits, “cultural prospectors” of globalization such as Hollywood and media tycoons were perceived as a threat to cultural diversity, as well as the equitable sharing of its own monetary and social benefits.

**Coalition-Building**

Negotiation tactics are closely interrelated; the effectiveness of one tactic can influence the effectiveness of another. The way parties frame an issue, for example, can significantly affect other parties’ understanding or empathy toward the issue, and consequently, the possibility for building coalitions. Likewise, the venue where negotiations take place can make a significant difference. UNESCO has different concerns than does the WTO, for example (although these concerns can also be interrelated, such as cultural trade), and whether negotiating parties convene in Paris, Rio, Tokyo, or some other city can greatly affect who is able to participate. If then, the objective of UNESCO Member States had been to negotiate a solidarist norm of “universal” cultural rights, which would open up the question of trade in cultural trade to more actors than just states alone, we would expect to find that coalition-building would take place in venues that were accessible to a wider array of civil society actors—and, of course, that the participation of these civil society actors would at last be reflected within
the final text of the *Convention*. This final section and analysis, however, show that this was not the case.

As France and Canada prepared to bring their shared concern for cultural trade into the network of UNESCO, they concentrated on building a coalition using the cultural diversity frame to gain support. Notably, France and Canada did not have to look very far in order to build this coalition. In June of 1998, Canada’s own Ministry of Culture established the International Network on Cultural Policy (INCP), which brings together ministers of culture from across the globe to discuss matters of cultural policy. While the INCP is the brainchild of Canada, it still has retained a semblance of autonomy as an inter-governmental organization. In September of 2000, an offshoot of INCP grew into another network, the International Network for Cultural Diversity (INCD). According to Voon (2007), this network of artists describes themselves as “dedicated to countering the homogenizing effects of globalization on culture” (p. 181). Similar to the INCP, the INCD has retained a semblance of autonomy as a non-governmental organization. For even while both organizations were initiated by Canada and their activities have been dominated by France (Singh, 2008), still they comprise a variety of state actors and non-state actors from a variety of countries, all of which have coalesced around culture—and rights thereto—as a common concern.

In March of 2002, with the help of Canadian trade lawyer Steven Shrybman, the INCD composed a first draft of a Convention on cultural diversity, which it later presented to the INCP. The INCP also had composed its own draft (Bernier, 2007). One

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12 INCD Website. See: http://www.klys.se/incd/incd_draft_of_convention_on_cultural_diversityf-01.htm
year later, these drafts were used by UNESCO’s General Council to formally invite the Director-General, Koïchiro Matsuura, to explore the possibility of a legally binding agreement that would further build upon the *Universal Declaration on Cultural Diversity*, the non-binding agreement every Member State of UNESCO had signed in 2001. The Director-General then delegated the work of further conceptualizing this *Convention* to two different groups of independent and intergovernmental experts, each of which convened three times in 2003 through 2005.

Outside the walls of UNESCO, another noteworthy event took place in Washington, DC in January of 2005, prior to the official signing of the *Convention* in Paris. The Smithsonian Institution Center on Folklife and Cultural Heritage hosted a conference titled “Globalization and Diversity”, which featured a number of civil society actors from academia, law, private industry (such as the Motion Picture Association of America), and representatives from indigenous populations. From both the expert meetings that took place within the walls of UNESCO, and civil society meetings such as the Smithsonian’s that took place on the outside, a number of common conflicts emerged from participants’ understandings of the purpose of UNESCO’s impending *Convention*, and how this purpose could best be served. These conflicts included: 1) whether the free market or government is the best guarantor of cultural diversity; 2) whether and how to emphasize either the promotion or protection or cultural diversity; 3) whether it were possible to strike a balance between the rights of producers and consumers; and, 4) whether it were possible to strike a balance between goals for development, which speaks to the commercial value of culture, and goals for democracy, which speaks to the
ideational value of culture. At the Smithsonian conference, for example, Tyler Cowen, a professor of Economics at George Mason University, advocated for a liberal market paradigm as the best way to ensure cultural diversity. Meanwhile, Benjamin Barber, a professor of Civil Society at University of Maryland, pointed out the “inherent structural inequities that maintain this system and do not allow equal representation of cultural groups, communities, and increasingly, nation-states”. In contrast to both of these market-oriented views, Robert Albro stated that the draft Convention did not clearly define cultural values apart from cultural products. Albro said on behalf of his indigenous community, “This provokes real concern that the draft convention simply moves us closer to a world where cultural identity, perversely, can be embraced only through the market”. And so, not every actor in the UNESCO network shared the same understandings as France and Canada did of what cultural diversity was supposed to look like.


14 Smithsonian website. See: http://www.folklife.si.edu/cultural_heritage/unesco/presentations.aspx

15 Smithsonian website. See: http://www.folklife.si.edu/cultural_heritage/unesco/convention.aspx#
Outcomes

In referring only to the final text of the *Convention*, one could have concluded that UNESCO negotiated this norm in pursuit of a certain ideal: the human right to *choose* cultural expressions within and across the borders of states, deemed a necessary condition for cultural diversity. On the other hand, one could also conclude that UNESCO negotiated this norm in pursuit of a quite different ideal: the state’s right to *regulate* the production, distribution, and consumption of cultural expressions, within and across its own borders. The potential conflict between these two Guiding Principles leads to a familiar question: Which actors should negotiate norms regarding “universal” cultural rights—should states determine for their citizens what the crossroads of *culture* and *rights* should look like, or do citizens have the power and agency to decide the same for their selves?

This chapter has introduced the UNESCO *Convention* of 2005 to demonstrate that international networks tend to negotiate pluralist norms of “universal” cultural rights, which privilege the cultural rights of states. When applied to the case study of the *Convention*, this means that UNESCO’s Member States have not negotiated a “universal” human right to culture. Instead, they have negotiated the right to universalize each Member State’s particularity within its respective territory—that is, to universalize what it means to be “French”, “Turkish”, or “Malawian”, even while the borders of these Member States comprise a diversity of cultures within. Consequently, the cultural *expressions* that a Member State’s government chooses to support through cultural policies may not resonate with the cultural preferences of its own citizens, let alone citizens of other Member States. Under the application of this norm, a person may fight
for her “universal” human right to cultural expressions; however, the particularity of her
own state’s cultural policies will likely stand in her way.
CHAPTER 4: Transnational Networks and Solidarist Norms

In the previous chapter, the case study of UNESCO’s *Convention for the Protection and Promotion of Cultural Diversity* (2005) demonstrated that international networks tend to negotiate pluralist norms of “universal” cultural rights, which privilege the cultural rights of states. In contrast, this chapter introduces two case studies to demonstrate that transnational networks tend to negotiate solidarist norms of “universal” cultural rights, which privilege rights of people. Taken together, these chapters on international and transnational networks support the central argument of this thesis—that norms of “universal” cultural rights will privilege either states or people, depending upon the network that negotiates the norm.

The case studies introduced in this chapter focus upon two different cultural groups: the Pimicikamak (pronounced “Pi-mi-chi-ca-mak”) Cree Nation, based in Canada; and the Representative Council of Black Associations, or *Le Conseil Répräsentative des Associations Noires* (CRAN), based in France. In both cases, state governments have not responded to these groups’ concerns that their cultural rights have been violated; consequently, both groups have hooked into transnational networks that provide alternative platforms for voicing their concerns. In turn, the actors that comprise transnational networks—news media, international organizations, religious groups, among others—have put added pressure upon France and Canada to change their treatment toward people within their very own borders. This process of various actors coalescing across state borders to, in turn, exert political pressure directly upon states, is a process that Keck and Sikkink (1998) have aptly termed the “boomerang pattern” (pp.
12-13). Notably, to achieve the “boomerang pattern” by pressuring states is a primary aim of transnational advocacy, as it can lead to the adoption of new norms.

Like the previous chapter on UNESCO’s Convention (2005), this chapter will also demonstrate that who participates in tactics of negotiation directly affects who stands to benefit from norms of “universal” cultural rights. Again, like the previous chapter, this chapter will analyze the same three tactics of negotiation—venue-switching, coalition-building, and issue-framing (see Singh, 2008)—as a means of illuminating who participates in negotiating these norms.

**Selection of Two Case Studies**

For two reasons, this chapter employs two case studies to demonstrate that transnational networks tend to negotiate pluralist norms. First, this chapter explores how UNESCO’s Convention for the Protection and Promotion of Cultural Diversity might have had a different outcome, if only these minority cultural groups had been more intimately involved in negotiating this norm of “universal” cultural rights. The Pimicikamak and CRAN were purposely selected as case studies, in fact, because their geographic locales are contained within states that played leading roles in negotiating UNESCO’s Convention. And yet, although Canada and France have played leading roles in forging “universal” cultural rights, it has not naturally and necessarily followed that these states have played leading roles in upholding “universal” cultural rights. For Keck and Sikkink (1998) have argued that although states are the “primary guarantors” of rights, they are also the “primary violators” (p. 12). As such, even while states are upholding “universal” cultural rights, according to one understanding of a norm, they may also, according to another understanding of a norm, be in the process of violating
these very same rights. Ishay (2004) has said of these clashes: “The notion of self-determination, as defined by various international bills of rights, fails to specify which nationality or group should end up being favored over the other when their claims conflict” (p. 10). Consequently, states do not necessarily represent the totality of understandings of cultural rights contained within their own borders, even when states negotiate norms within international networks that advocate universalism. Without question, to represent a totality of understandings regardless of borders would mark a move toward true universality. While such a move seems a difficult, if not impossible, task, it is still important to understand how different understandings among different networks create clashes between “universal” norms.

Second, the Pimicikamak represent an indigenous community, whose members continue to live on the same land their ancestors inhabited long before the formation of the Canadian state.16 CRAN, by contrast, represents an immigrant community, whose members and forbearers settled in France long after the formation of the French state. As such, the Pimicikamak and CRAN represent two types of minority cultural groups—whose rights many states have protected in theory, but have not always honored in practice. Why are these cultural groups important? As Kymlicka (1995) has argued, the failure of states to embrace cultural diversity is marked by the failure of states to embrace the rights of indigenous and immigrant peoples. Even UNESCO, in its World Culture and Development Report titled Our Creative Diversity (2005), linked the issue of cultural rights to the rights of these minority cultural groups:

16 For a description of most commonly recognized features of indigenous peoples, see Niezen (2000).
With regard to the cultural rights of minorities, the Commission endorses the opinion that members of minority groups should have the same human rights as members of majorities, no less and not necessarily any more for the moment than those set out in the Universal Declaration of Human Rights to which they subscribe (p. 21).

This statement, in comparison with UNESCO’s *Convention*, offers a different way of looking at cultural rights. While the *Convention* is primarily concerned with the creation and consumption of cultural products, which UNESCO regards as vehicles of identity and a means of participating in cultural life, Kymlicka shares the view that cultural rights concern people—and their “right to have rights” as legitimate citizens of states, as Hannah Arendt (1951) has famously articulated—despite the countless categories such as race, religion, gender, and geography that are commonly used to draw boundaries between people and place them into cultural groups. As such, if norms of “universal” cultural rights have any chance of truly being universal, then any study of how these norms are negotiated must account for whether minority cultural groups’ understandings of their own rights are taken into consideration. More importantly, it must account for whether these understandings are, in the end, incorporated into these norms.

To understand minority cultural groups’ own understandings of their own rights is a first step toward envisioning how norms of “universal” cultural rights can be solidarist, in that they privilege the rights of people who historically have been marginalized by their own states. But more importantly, this chapter employs two case studies because the Pimicikamak and CRAN vary along an important dimension of transnational networks, an explanatory factor of this thesis. In comparison to international networks, the other explanatory factor in this thesis, transnational networks do not necessarily convene in a
common geographic locale; rather, they seek to negotiate norms and put pressure upon states through more distributed means, such as through the media. In the case of the Pimicikamak, their representatives traveled beyond the borders of Canada to the U.S. and to Geneva, Switzerland to exchange ideas and to voice their concerns. In the case of CRAN, their representatives stayed within the borders of France, but also exchanged ideas and voiced their concerns through “lessons learned” from abroad, such as framing issues in the same way as activists did during the U.S. civil rights movement. As such, the variance in these two cases demonstrates that transnational networks can converge around same concerns, exchange ideas, and negotiate norms, even without sharing the same cultural background or the same geographic locale.
Case Study #2: The Pimicikamak Cree Nation

The first case study of this chapter focuses upon the Pimicikamak Cree Nation, an indigenous community based in Manitoba, Canada. The word Cree refers broadly to First Nations in Canada, as well as Native Americans in the United States, who identity with or speak the Cree language. With more than 6,000 registered members, the Pimicikamak are the largest First Nation within the Canada-based portion of the Cree Nation. John Miswagon, Chief of the Pimicikamak, has said of his community: “We are a people of rivers and lakes.” Indeed, the Pimicikamak live primarily around Cross Lake and along the Nelson River, which drains from Lake Winnipeg, flows northward through Cross Lake, and empties into the Hudson Bay. These waterways, and the boreal forest that surrounds them, sustain the Pimicikamak’s economic, social, and cultural ways of life, which include “traditional” practices of hunting, fishing, and trapping.

These waterways and boreal forest have sustained not only the Pimicikamak’s economic, social, and cultural ways of life; they have also served the needs of non-indigenous communities that later came to inhabit the area. In the early 18th Century, English fur traders working for the Hudson Bay Company began using the Nelson River as an inland route to Fort Nelson, a trading post that was located on the mouth of the Hudson Bay. In the early 20th Century, the Hudson Bay Railway constructed a line of

17 The Cree language is a cluster of mutually intelligible dialects that derive from Algonquin. Cree First Nations often still conduct public meetings in the Cree language.


railroad track that still runs nearly the entire length of the River. Also in the early 20th Century, Canada’s newly-established Conservation Commission discovered that the Nelson River’s horsepower could be harnessed for hydroelectricity; however, construction of power plants and river dams for this purpose did not begin until several decades later. Once construction finally began in the 1950s, the landscape of Manitoba, and the Cree Nation’s indigenous ways of life, changed both suddenly and severely. In particular, the Churchill-Nelson River hydroelectric project, which began construction in the 1960s, became a source of great consternation for the Pimichikamak.

The Churchill-Nelson River Hydroelectric Dam Project

In the 1960s, Manitoba Hydro, an electric utility corporation based in Winnipeg, signed an agreement with the governments of Manitoba and Canada to begin construction on the Churchill-Nelson River Hydroelectric Dam Project. Together, this corporation and these two governments became known as the “Crown Parties” of the Project. The purpose of this Project was to augment the hydroelectric horsepower of the Nelson River by creating a water diversion from the Churchill River; and to finally harness this horsepower by constructing seven dams and eleven power stations (Krotz, 1991). In the book Aboriginal Peoples and Natural Resources of Canada, Notzke (1994) describes the Project’s effects on the landscape as follows:

The lakes...became subject to a continued cycle of erosion and slumping, with no shoreline stabilization in sight. Vast areas were flooded. Habitat and migration patterns of animals and birds were severely altered. Forests turned into swamps and mercury, leached from the soil, has been released into the food chain. As a result, diet, economy,
and lifestyle of communities along the Nelson and Churchill Rivers were changed forever, with their fishery ruined and their trapping and hunted disrupted (p. 18).

As this excerpt makes clear, the Project’s adverse effects on the landscape created, in turn, adverse effects upon the lives of local residents, including the lives of the Pimicikamak. Remarkably, the Crown Parties had neither consulted First Nations during the planning stages of the Project, nor informed First Nations of possible adverse effects following the Project’s implementation.20 According to a report conducted by the Tataskweyak Cree Nation, the Cree Nation’s first awareness of the Project had been granted not by the Crown Parties, but by another indigenous community living nearby—specifically, the First Nation of Southern Lake, who in 1968 released a publication that forewarned the “high level impoundment of water”.21 In response to a final report on the Project released in 2000 by the World Commission on Dams, the Pimicikamak made the following statement: “We have been dispossessed, displaced and...devastated by large hydro-development projects, initiated and built in our traditional lands...against our wishes and without our consent.”22

The Northern Flood Agreement

By 1974, the Picmikamak and several other First Nations had experienced firsthand the detrimental effects of the Project’s flooding, including the destruction of

20 Environmental assessments were not sufficiently undertaken prior to the Project’s implementation, which resulted in flooding on 20% of reservation land. The Canadian government later acknowledged these failures in the 1992 Report of the Auditor General of Canada and the 1996 Final Report of the Royal Commission on Aboriginal Peoples.

21 Tataskweyak Website. See: http://tataskweyak.mb.ca/

22 Dams and Development Website. See: http://www.dams.org/report/reaction/reaction_cree.htm
hunting grounds and the commercial fishing industry. Sarfaty (2007) writes, “Without the option of continuing to live off the land, the majority of Cree became welfare recipients and had to learn new skills to compete in the growing wage economy…the hydroelectric project attacked Cree cultural values as well as the physical and psychological health of the community” (p. 457). According to the Canadian Environmental Assessment Agency, among the Cree cultural values under attack were the ability to spend time in the forest—a time “when they can strengthen family ties and improve their health.” Consequently, four of the affected First Nations established the Northern Flood Committee to confront the Crown Parties regarding their lost livelihood and lost ways of life. After three years of negotiations, both parties signed the Northern Flood Agreement (NFA) to compensate for these loses. According to Munson (2003), the basic provisions of the NFA include:

1) the guaranteed replacement of every flooded acre with four acres of undamaged land;
2) the monetary compensation of lost hunting, fishing and trapping profits; and,
3) the eradication of mass poverty and unemployment in the affected communities.

Beyond these basic provisions, Article 7 of the Agreement makes specific provisions for restoring and, if necessary, relocating cultural artifacts such as cemeteries and statuary that were damaged by the Project’s flooding.

23 Canadian Environmental Assessment Agency Website. See: http://www.ceaa.gc.ca/010/0001/0001/0017/summary_e.htm
24 Besides the Pimicikamak, the other First Nations that comprised the Northern Flood Committee were Tataskweyak, Kiche Waskihekan, Nisichawayasihk, and Kinosao Sipi.
25 Manitoba Hydro Website. See: http://www.hydro.mb.ca/community/agreements/nfa/t_of_c.htm
By 1998, twenty years after the NFA was signed, First Nations had received negligible compensation from the Crown Parties according to the terms of the Agreement; Canada’s federal government covered some of the Committee’s administrative costs, but no jobs were created and only 60 of the 14,000 promised hectares of land were provided. As such, the Pimicikamak’s cultural rights had been violated—the rights to sustain their ways of life through “traditional” practices of hunting, fishing, and trapping upon their very own reservation—and their own federal government, which had promised to ensure or compensate these “traditional” practices, had left them in a bind instead.

Notably, one possibility to break free of this bind had been presented in 1992. To compensate for reneging on the 1975 Northern Flood Agreement (NFA), the Crown Parties offered one-time cash buy-out settlements, or Comprehensive Implementation Agreements (CIAs), to the First Nations of the Northern Flood Committee (NFC). Of these five First Nations, the Pimicikamak was the only one that chose not to sign, based largely on the fact that the Crown Parties had not conducted any formal assessment of the damages that had been caused; consequently, the Pimicikamak could not know whether a one-time settlement was adequate to compensate for the long-term coverage promised by the NFA. As Sarfaty (2006) has stated, “The communities were forced into a seemingly lose-lose situation—sign the CIA and accept the extinguishment of treaty rights or continue to live in severe poverty, unsure of whether the NFA would ever be implemented” (p. 461).

Keck and Sikkink (1998) have emphasized that, in the case(s) that states violate or refuse to recognize the rights of people within their own borders, these people “often
have no recourse within domestic political or judicial arenas. They may seek international connections finally to expose their concerns and even to protect their lives” (p. 12). Because the Crown Parties reneged on the Agreement and had offered a one-time settlement that was questionable at best, the Pimicikamak had found no recourse within the borders of its own state. Consequently, after twenty years of lobbying Canada’s government, the Pimicikimak decided to “expose their concerns” (Keck and Sikkink, 1998, p.12) through hooking into transnational networks.
Negotiation Tactics

Venue-Switching

Singh (2008) writes that the broader definition of venue-shopping is “the ability of actors to shift the venue for a negotiation to a place or organization most conducive to their interests” (p. 52). It could be said of the Pimicikamak’s own venue-shopping that they chose not to switch just to one venue, but to multiple venues in order to voice their concerns and strengthen the coalescence of transnational networks to exert pressure on the Canadian state. Perhaps the most significant venue the Pimicikamak sought out is the annual, week-long, Geneva-based U.N. Working Group on Indigenous Populations, one of six working groups overseen by the U.N. Sub-Commission on the Promotion and Protection of Human Rights. According to Sarfaty (2007), this was the primary venue for indigenous peoples during the 1980s and 1990s. In July of 1998, representatives of the Pimichikamak joined the Working Group to air their grievances alongside indigenous peoples from all over the world.26

In December of 1998, only a few months after the Pimicikamak joined the Working Group, the U.N. Committee on Economic, Social, and Cultural Rights issued a scathing report on Canada’s record during the previous five years (Branswell, 1998). Notably, the primary text of this U.N. Committee, the International Covenant on Economic, Social, and Cultural Rights, was signed into agreement in 1966, a year during which the Crown Parties were still constructing the Hydroelectric Project, but also

26 This Working Group was replaced successively by the Expert Mechanism on the Rights of Indigenous Peoples in 2008.
several years before the Northern Flood Agreement was negotiated. As such, the Crown Parties that negotiated this Agreement had not heeded this Covenant. For the Pimicikamak, the first Article of this Covenant would have been especially salient:

**Article 1:** All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

More than thirty years later in 2007, the Declaration on the Rights of Indigenous Peoples was adopted by more than thirty states. This document was more than twenty years in the making; progress had been slow because of concerns expressed by states “with regard to some of the core provisions of the draft declaration, namely the right to self-determination of indigenous peoples and the control over natural resources existing on indigenous peoples' traditional lands.”27 Notably, Canada did not sign the Covenant. Even while the Canadian state likely expressed reservations during the course of these negotiations, the scathing U.N. Report that came forth in the midst of these negotiations demonstrates that the “boomerang effect” (Keck and Sikkink, 1998) does not necessarily serve the interests of the state, and certainly does not judge a state’s record on rights based upon whether a state has chosen to sign a particular agreement. In other words, those who composed the Report did not care than Canada did not support this norm of

Cultural Rights; those who wrote the Report still had their reasons to “name and shame” the Canadian state for violating the rights of Pimicikamak.

Bill Namagoose, Executive Director of the Grand Council of the Cree, said of this U.N. Report: “This gives a black eye to Canada from a respected United Nations body…Canada goes around the world saying that it’s a champion of human rights ... I think he (Prime Minister Jean Chretien) has to begin to address the situation in his backyard, also” (Branswell, 1998). Four months later, in April 1999, the U.N. Human Rights Committee evaluated Canada's compliance with the International Covenant on Civil and Political Rights; this Committee, too, gave Canada a very poor report—particularly with regard to “the fundamental human right of self-determination.”28 As these reports make clear, the boomerang pattern quickly took effect in placing political pressure upon the Canadian state.

**Coalition-Building**

In his research on negotiations, Singh (2008) has written of coalitions: “As coalitions form, a diffusion of power becomes a concentration of power” (p. 55). In a way, the coalition that the Pimicikamak forged at home alongside four other First Nations, led what would become the failed Northern Flood Agreement, which eventually led to a new coalition abroad. When the Pimicikamak traveled to Geneva to join forces with indigenous communities from around the world, they engendered a diffusion of power away from the Canadian state, as they managed to sidestep Canada’s legal jurisdiction to eventually get their own way—in the sense, at least, that they exerted

28 Dams and Development Website. See: http://www.dams.org/report/reaction/reaction_cree.htm
pressure on the Canadian state. Notably, this Geneva forum enabled a coalition not only among indigenous communities from around the world, which effectively exerted pressure upon their respective states; it also engendered a coalition among Cree Nations across Canada, which raised the volume of their collective voice within the U.N. Working Group itself. Roland Robinson, who was Pimicikamak Chief at the time, joined the Chief of the Assembly of First Nations, several representatives from the Grand Council of the Crees (GCC), which represents reservations within the province of Quebec, and four other Chiefs from Robinson’s own province of Manitoba to present the poor social, cultural, and economic conditions across Canada’s reservations as a whole. According to Sarfaty (2007), this enabled the coalition to “to magnify their voice in U.N. fora and challenge Canada’s human rights record” (p. 466).

In addition to bypassing the Canadian government to join the U.N. Working Group, the Pimicikamak reached out to other diverse actors in academia, business, and faith-based organizations. In Canada, the Pimicikamak reached out to “church groups and colleges throughout Winnipeg to inform Manitoba Hydro customers of the social costs of their electric power” (Sarfaty, 2007, p. 464). Across the border in the U.S., they launched a “politics of embarrassment” campaign in the Midwest, where residents of Minnesota purchase 90 percent of Manitoba Hydro’s energy exports (Niezen, 2006). They also reached out to academia—specifically, to the Chairman of the School of Social Medicine at Harvard University, Arthur Kleinman, about the poor health conditions and services on the Pimicikamak reservation. Dr. Kleinman determined that healthcare on the reserve had reached a “crisis level”; the Pimicikamak used this assessment to write letters to both the
World Health Organization (WHO) and the U.N. Committee on Economic, Cultural, and Social Rights (Sarfaty, 2007).

**Issue-Framing**

Singh (2008) has described the frame as “a mental shortcut”, which is provided by “a powerful set of words or a visual that provides a particular slant to the issue in question” (p. 49). Regarding their function in negotiations, frames “provide a way for negotiating parties to conceptualize an issue and convince others to join them” (pp. 51-52). The Pimicikamak were able to broaden and deepen their network of support across political borders, such as those of the Canadian state, and across borders between issues or concerns, such as economic, environmental, and cultural concerns. As Sarfaty (2007) has noted, the Pimicikamak “identified their cause with a broader range of values, such as environmental justice, that would appeal to the non-indigenous public” (p. 468).

Although environmental justice concerns might appear quite distinct from cultural concerns, they two are in fact interrelated within the context of the Pimicikamak’s Cree Nation’s “traditional” ways of life, including fishing, trapping, and hunting.

The primary faith-based organization supporting the Pimicikamak was the New York-based Interfaith Center on Corporate Responsibility (ICCR). They, too, appealed to the environmental factor in the Pimicikamak’s cultural rights equation. Following a 1999 inquiry in the Crown Parties Project, funded by profits from the Interfaith Center’s own private investments, the Center released an official report calling the event(s) an
"ecological and moral catastrophe", as well as a case of “environmental racism”. The second is a term coined in 1981 by an American United Church of Christ Pastor, Benjamin Chavis, based upon a study that revealed a strong correlation between toxins dumping in the U.S. and residency of African-Americans. Chavis has used the term not only to speak directly about pollution in racial minority neighborhoods, but also the systemic factors that likely caused it: “the siting of polluting industries, or the exclusion of minority groups from public and private boards, commissions, and regulatory bodies” (Chavis, 1986). Such was the case of the Pimicikamak, who had known nothing of the Manitoba Hydro Project during its stages of planning, and so had no opportunity to have a voice in the matter.

As part of the Pimicikamak’s “politics of embarrassment” campaign, Chief John Miswagon traveled to Minnesota in April of 2000 to speak to cross-border patrons of Manitoba Hydro. He opened his remarks with the words, “A picture is worth more than a short presentation by one Cree Chief”. He then projected images onto the walls of his speaking venue, St. Johns University, to display the environmental degradation that had resulted from the Project-induced fluctuations and floodings. As he proceeded in his speech, Miswagon appealed to the social conscience of Minnesotans as consumers of Xcel, the largest importer of Manitoba Hydro energy. In a statement that paralleled the sentiment of Tavernier, who at the Cannes Film Festival had likened the perceived mistreatment of the French to the mistreatment of Native Americans, this First Nation


30 Native Americans and the Environment Website. See: http://ncseonline.org/nae/docs/miswagon.html
Chief likened the relationship that Minnesotans should have with its northerly neighbors, the Pimicikamak, to the relationship that Minnesotans already do have with another minority group in need. This minority group comprised 20,000 Somali refugees who had resettled in Minnesota in recent years, and to whom Minnesota had “opened its hearts”. What was more obvious about the needs of Somalis, as Miswagon pointed out, was that these new residents were visible in local neighborhoods and schools; however, Minnesotans were not necessarily aware of the negative impacts of their nonrenewable energy consumption on a people living just a few miles north.

Outcomes

To date, the most tangible outcomes of the Pimicikamak’s transnational efforts have emerged abroad in the U.S., not in Canada. In May of 2001, shortly after the Pimicikamak had launched its “politics of embarrassment” campaign abroad, the Minnesota passed the Sustainable Energy Bill, which now requires Xcel to buy a certain percentage of its energy resources as renewable energy sources, which Manitoba Hydro was not. The message has been widely broadcast that the Crown Parties, a marriage between corporate and state interests, had violated the many intersections of international rights pertaining to the Pimicikamak: human rights, cultural rights, economic rights, and the right to self-determination—even while the Crown Parties and this First Nation had negotiated a specific treaty, the Northern Flood Agreement, based specifically upon the events of the Project. Moreover, while Canada recently did not participate in signing the 2007 Declaration on the Rights of Indigenous Peoples, it still is a signatory to a number

31 Native Americans and the Environment Online Website. See: http://ncseonline.org/nae/docs/miswagon.html
of other international agreements that intersect these same rights, including the original UN Charter. As such, the Pimicikamk’s transnational effort to negotiate and establish (or re-establish) a norm as a people whose cultural values deserve protection and promotion, the Canadian state has not responded in accordance with these efforts.
Case Study #3: The Representative Council of Black Associations

“Parties shall endeavor to create in their territory an environment which encourages individuals and social groups to create, produce, disseminate, distribute, and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belongs to minorities and indigenous peoples.”—Article 7, UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions

“French universalism, the whole French republican ideal, proposes that if you embrace French values, the French language, French culture, then race doesn’t exist and it won’t matter if you’re black. But of course it does.”—Léonora Miano, novelist from Cameroon living in France

The second case study of this chapter focuses upon Le Conseil Réprésentative des Associations Noires (CRAN), or the Representative Council of Black Associations. Founded in Paris on a university campus in November of 2005, CRAN serves as the umbrella organization for 130 black civic associations and is the only black lobbying organization in France (Sachs, 2007). For the purpose of this thesis, CRAN stands for an immigrant community, as this lobbying organization seeks to represent French citizens of African and Caribbean descent who are either immigrants or French-born descendents of immigrants, and who typically are marginalized within mainstream French society.

The founder and president of CRAN, Patrick Lozès, has described the organization’s purpose as follows: “It's simply the liberation of a people who don't see themselves reflected in their country's public life—in its theater, television, medicine, and universities—except in negative images” (Sachs, 2007, section 1). CRAN has pursued this liberation through a variety of means; for example, protesting French public school curricula advancing the idea that some aspects of colonialism were “positive”, protesting
negative portrayals of blacks in French television, radio, and film, and challenging the French government’s prohibition of official data on religion, ethnicity, and race.

**Colorblind in France**

To observers of France, particularly foreign academics, the establishment of CRAN was not a surprise. If anything, the surprise was that the members of CRAN had not come together much earlier (Ndiaye, 2007). As the previous chapter of this thesis illustrated, the French state has frequently supported matters of “culture”—cultural identity, cultural diversity, cultural rights, among others—within international networks such as UNESCO. For France, however, and for other states belonging to international networks, supporting universal rights that intersect with matters of culture has, in actuality, proved much more difficult at home. Like every liberal state, the modern French state was founded upon the principle of equality, or égalité, which in France’s case was a product of the French Revolution. What sets the French state apart from other liberal states, however, is its choice of how to conform to this principle.

It may seem a curious thing that black or dark-completed citizens are marginalized within French society; first, because blacks have lived in France and have assumed the legal status of French citizenship already for several generations; second, because the French state preaches a doctrine of égalité for all who live legally within state borders. Looking briefly back in time, the history of immigration in France is very much tied to the country’s uneven population growth and labor needs. Unlike the rest of Europe, France experienced very low fertility rates throughout the 19th Century, and, with respect to its own population, incurred the greatest losses during the First World War (1.4 million out of a total population of 40 million). It stood to reason, then, that opening its
doors to immigration was the only way France could sustain its slow growth and quick losses in population. In the 1930s, the French government supported laws to boost the birth rate, which proved effective; the country experienced an unprecedented baby boom following the Second World War, which accompanied an impressive economic boom. However, once France’s economic growth finally slowed down in the 1970s, the country had already welcomed a wave of labor force immigration from its former colonies, mostly in northern and western Africa, which coupled feelings of economic disappointment with feelings of resentment toward immigrant “outsiders”. Today, the French state still considers everyone who is black in France a citizen of “African origin”. As such, the government and general mindset of France do not allow newer generations of black citizens to wrest themselves free from this underclass past and to climb higher rungs on the social and economic ladder.32

After France abolished slavery in African colonies more than 160 years ago, it strengthened its commitment to égalité by adopting a new policy to become “colorblind”. As such, the government does not collect demographic data on ethnicity, race, or religion, in either its census or other official surveys. And so, French citizens enjoy equal treatment under the law—theoretically—regardless of where they come from, what they look like, or what they believe in. Being that many French citizens actually come from, look like, and share beliefs with the same cultures France had once colonized, the state’s choice to remain colorblind presumably has prevented discrimination against minorities, particularly against Muslims and blacks.

While a colorblind policy may appear to reflect a real push toward universalism, in that citizens enjoy equal treatment under the law, Lozès has said of this policy: “In reality we’re blind in France, not colorblind but information blind, and just saying people are equal doesn’t make them equal.” For in the attempt at égalité, the French government has not tracked information such as the kinds of neighborhoods in which black citizens live, the kinds of businesses where they are employed, or the kinds of schools they attend. Consequently, if discrimination actually exists within these institutions, the French government’s interpretation of its own Constitution does not enable public officials to track it, which arguably is a first step toward public officials helping to prevent it. At the same time, one must ask whether acts of discrimination actually occur “off the grid” of the government, or whether the government itself is discriminatory. In 2003 and 2004, for example, French schools expelled several female students for wearing headscarves, a religious expression that the “colorblind” National Assembly had banned earlier that year. In response to these events, McClintock (2005) wrote:

The French principle of égalité was turned on its head: to oblige minority citizens to conceal their identity and deny their diversity. In effect, the policy denies equality by quashing identity and stigmatizing diversity and, as such, can translate in the broader society into generalized discrimination and violence (p. 3).

Indeed, were these girls expelled from school as protection against discrimination, or as an act of discrimination itself?

In the weeks and months before CRAN officially formed, other events occurred at the crossroads of diversity and discrimination—which, like the issue of headscarves, turned the heads of the international community. In February of 2005, the National
Assembly passed a law that French schools much teach “positive” aspects of colonialism. In addition, fires broke out in a sub-standard hotel in April of 2005, and in a sub-standard apartment building in August of 2005, killing over 40 West African immigrants. And finally, in late October of 2005, two teenage boys were electrocuted and killed as they tried to escape French police. The deaths of these youths, who were French citizens with families from Mali and Tunisia, sparked riots that lasted nearly three weeks.

Finally, another noteworthy event took place during this time period, again at the very same crossroads. This event was the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions which, like the riots, happened in late October of 2005. As such, the UNESCO Convention, conceived by the French state in the name of cultural diversity, was born within days of the death of two French citizens—citizens who, for much of France and the rest of the world, were the perfect example of cultural diversity. And so, it seemed the text of the UNESCO Convention had got it right: “The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples” (Article 2.3); however, the reality had somehow got it wrong. If the French state, in fact, had been adept all along at protecting and promoting a diversity of cultural expressions, arguably to “build peace in the minds of men”, what could explain this civic unrest at home?
CRAN and Cultural Rights

UNESCO’s World Culture Report *Our Cultural Diversity* makes an important point about the nature of cultural rights: “Just as in the tasks of building peace and consolidating democratic values, an indivisible set of goals, so too economic and political rights cannot be realized separately from social and cultural rights” (2005, p. 10). This leads to the question, what are the cultural rights for which this minority group of France has been fighting? How has CRAN managed to exert pressure upon the French state by hooking into transnational networks? And lastly—does CRAN, as a representative organization of a minority cultural group, possess an understanding of cultural rights that connects in any way to the UNESCO Convention’s understanding of cultural expressions? As the following sections will show, the cultural right for which CRAN has argued relates directly to the *International Covenant on Economic, Social and Cultural Rights*:

**Article 2:2:** The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Through an analysis of the same three negotiation tactics that were explored in the previous cases, the following case of CRAN will also demonstrate that transnational networks tend to negotiate solidarist norms of “universal” cultural rights, which privilege the cultural rights of people. For although the law of France ensures equality in name, CRAN has showed that in practice, this has not been the case.
Negotiation Tactics

Coalition-Building

CRAN has modeled itself upon—and linked itself to—a number of other activist organizations, both in France and abroad. In Paris, CRAN has become the umbrella organization for a number of local black interest groups, enabling these groups to speak directly to the government—on a number of issues—with a single, unified voice. These local black interest groups are only one of four subgroups of CRAN—there is also a subgroup of researchers and historians, a subgroup of politicians and activists, and a subgroup of individual citizens. According to Braga et al (2007), building this strong coalition among civil society actors has been a momentous step forward for France, a country where public opinion is still strongly aligned with the governing body considered to be the “cornerstone of society and the indispensible unifier of individuals,” the French state (p. 338).

Remarkably, while CRAN is an umbrella organization for black affairs, it has modeled itself based upon another French umbrella organization for secular Jewish affairs, *Conseil Représentatif des Institutions Juives de France* (CRIF), or Representative Council of French Jewish Institutions. This may come as a surprise for some, being that the relationship between Jewish and black communities is ambivalent—“the major subject of controversy being the legal status of the Nazi genocide, on the one hand, and of the slave trade, on the other” (Camus, 2006, p. 6). At the same time, it cannot be said that the historical remembrances, experiences, and identities of blacks—both positive and negative—are the same across the board, either. Along these lines, Léonor Miano, a
France-based author from Cameroon, makes an important point about being black in France, which is a diverse condition in and of itself:

There is no such thing as a black ‘community’ in France—yet—partly because we have such different histories. An immigrant woman from Mali and another from Cameroon view the world in completely different ways. You also shouldn’t think there isn’t racism among blacks in France, between West Indians and Africans. There is. But ultimately we’re all black in the face of discrimination (Kimmelman, 2008).

Clearly, there is no singular experience of discrimination that can unify an entire race or religion. Still, there is great potential for building coalitions across different groups under the general rubric of discrimination and denial of rights. The official spokesperson of CRAN, Louis Georges Tin, made this same point in justifying why he sang the Negro Spiritual *We Shall Overcome* at the end of a speech before the United Nations, even while his speech concerned worldwide discrimination against homosexuals: “Being very committed to black and Lesbian, Gay, Bisexual, and Transgender (LGBT) issues, I wanted to show the connection between them: the idea that this is a battle for freedom and dignity”.33 From these linkages with Jewish and gay advocacy groups, it is clear that CRAN has tried to embrace diversity from within the borders of France, as these groups are all fighting for a similar kind of cultural right: positive cultural representations in mainstream French society, as well as equal access to opportunity in economic and political life.

'This voluntary association of one cultural group with another is what New Cosmopolitan scholars such as Nussbaum and Robbins have suggested is a move in the direction of universalism (Cheah and Robbins, 1998). In the context of transnational activism, Keck and Sikkink (1998) suggest that these forms of voluntary associations and interactions offer an alternative to the model of merely “diffusing” liberal ideas and institutions. For they offer, instead, a model through which “the preferences and identities of actors engaged in transnational society are sometimes mutually transformed through their interactions with each other” (p. 214). That is not to say that these interactions lead to the melding together of multiple cultural identities into one singular cultural identity, but that it can lead to a kind of “plurality of particulars”, an idea again wrested from Greek philosophy and advanced in the politics of contemporary Cosmopolitanism (Cheah and Robbins, 1998). This feeds directly into the argument of this thesis regarding transnational networks; namely, that this type of network tends to negotiate norms of cultural rights that are soladarist, in that they respect “universal” human dignities while still respecting differences among cultural identities, regardless of borders of states. As such, cultural differences among, for example, blacks, Jews, and other groups, are acknowledged and respected, but still these different groups enjoy equal access to opportunity.

**Venue-Switching**

Beyond the borders of France, CRAN has also picked up knowledge, information, and experience from other organizations such as the Urban League and the National Association for the Advancement of Colored People (NAACP). While the launch of the NAACP in 1905 took place one hundred years before the 2005 launch of CRAN, the two
events looked remarkably similar—a few members of the black community met quietly in a room to discuss problems of racial inequality. These two organizations finally came together in April of 2007, when the president of the NAACP, Dennis Courtland Hayes, as well as the president of CRAN, Patrick Lozès, met with several representatives at the United States Embassy in Paris, including Deputy Chief of Mission Thomas J. White. This meeting was part of a week-long “General Assembly” organized by CRAN, to which CRAN invited prominent African-Americans, including representatives of NAACP, for the purpose of exchanging “lessons learned in the United States about integration and race issues”.

Similar to the Pimicikamak, CRAN also called upon academia across national borders to help them articulate and communicate their concerns. In August of 2006, CRAN hosted Edgar Chase, an African-American business professor from Dillard University, to speak about achieving racial equality through education. According to Sachs (2007), this guest-speaker event quickly evolved into a strategy session, whereby some of the most effective tactics of the U.S. Civil Rights Movement, such as peaceful protests and boycotting businesses, were discussed at great length and adapted for the purposes of CRAN. Chase also encouraged members of CRAN to “[have] a positive mind-set. You’ve got to sell your dream and focus on the future, not the past.” He then went on to say, “Maybe you do a protest march, but you send a positive message: ‘We’re doing this because we love France and want it to be able to compete in the global economy.’” This forward-looking stance was a departure from how Lozès had originally framed the purpose of CRAN. For in his inaugural speech at the launch of CRAN in

34 U.S. Embassy Website: http://france.usembassy.gov/event070406.html.
October of 2005, Lozès had spoken primarily of the importance of remembering abolition, rather than realizing the rights of blacks living in France today. Yet this forward-looking stance evidently became something that Lozès took to heart, as the section on issue-framing will show.

**Issue-Framing**

Frames can assume a number of forms, from words to images to numbers. In striving for positive recognition of blacks in mainstream cultural representations of France, and, in striving for equal opportunity in economic and political life, CRAN has deployed a mixture of frames, in each of these three forms. One of the most effective frames has been statistical data, as the French state has long deprived itself of this type of information. The use of statistics like these as a social weapon (in this case, against the state) is what Keck and Sikkink (1998) call information politics; in other words, promoting change by reporting facts. As was the case in France, these statistics provided “information that would not otherwise be heard, and they must make this information comprehensible and useful to activists and publics who may be geographically and/or socially distant” (p. 18).

In 2006, Lozès encouraged French citizens to pick up where their government had fallen short in the attempt at *égalité*. For CRAN hired the private polling firm TNS Sofres to conduct a survey of 13,000 adults living in France, including demographic data such as religion, race, and ethnicity. According to the results of the survey, 56% of black people believed they had suffered racial discrimination several times, and 61% had experienced discrimination within the past year. In an interview with *BBC News* in January of 2007, Lozès said, “For a long time, we were told there wasn't a problem
because there weren't any figures. This survey is a diagnosis. These statistics show what this society does not want to hear or see.”[35] In another interview with the New York Times, which took place in June of 2008, Lozès revealed other obvious but significant statistics: the lower house of Parliament, the National Assembly, has one black member among 555 members, and no black senators out of 300. As the number of French black citizens is estimated between 3 million and 5 million, and the population of France is more than 61 million, the number of black citizens serving in French Parliament seems paltry indeed. Finally, CRAN has unearthed that the percentage of blacks in France “who hold university degrees is 55, compared with 37 percent for the general population. But the number of blacks who get stuck in the working class is 45 percent, compared with 34 percent for the national average.” (Kimmelman, 2008, section 15).

Outcomes

To date, France has not yet changed its law that prevents official gathering of demographic data, although the National Assembly has considered the debate, if not the legislation. However, CRAN’s transnational efforts to cast light upon citizens that had remained in the shadows has resulted in the new appointment of a French minister of Diversity and Equal Opportunities, Yazid Sabet; it was he who re-opened the debate with President Sarkozy. This marks a positive first step toward bringing reality a little closer to the law—that is, the law that all French citizens are treated equally.

In comparison with UNESCO’s Convention, this chapter has offered a different way of looking at cultural rights. While UNESCO’s Convention is concerned primarily with the creation and consumption of cultural products, which UNESCO regards as vehicles of identity and a means of participating in cultural life, these two case studies
provide empirical evidence that minority cultural groups believe that cultural rights concern people—and their “right to have rights” as legitimate citizens of states, as Hannah Arendt (1951) has famously articulated—despite the countless categories such as race, religion, gender, and geography that are commonly used to draw boundaries between people and place them into cultural groups. These two perspectives expose the slippery slope of trying to negotiate norms—and formulate public policy—at the intersection of culture and rights, and especially around cultural diversity. Does cultural diversity refer to a diversity of products, or people? Do cultural rights refer to bringing “marginalized” cultural products into the mainstream, or do they refer to bringing “marginalized” cultural groups or people into the mainstream?

Before concluding this chapter, a final point should be made—that a person’s cultural rights are not always-already violated, simply because that person belongs to a minority cultural group. Likewise, no person belonging to a minority cultural group is always-already blameless of violating the cultural rights of others. Benhabib (2002) has warned that such always-already assumptions smack of cultural essentialism. And yet, while no state holds the perfect record for respecting the rights of cultural groups contained within its own borders, and, no cultural group has a perfect record of respecting the rights of its own members, on the whole, indigenous and immigrant communities experience the greatest marginalization by states. Consequently, this chapter has employed these two case studies to challenge a common assumption; namely, that states are the natural guarantors of “universal” rights and necessary protectors of vulnerable groups. And, as these two cases have shown, groups that are commonly believed to be vulnerable—and therefore need the protection of states—in fact often find their own
ways to strengthen their positions and fight for their rights by hooking into transnational networks. While the tangible outcomes on these cases remain to be seen, the norms have at least been established.
CHAPTER 5. Conclusion

“Addressing cultural rights is complex because culture has historically been bound up with questions of power. Throughout human history, dominant cultures in all parts of the world have imposed or tried to impose their own patterns of thought, speech and action on the peoples they have encountered or on weaker members of their own societies. As a result, issues of culture and cultural rights are often associated with historical grievances arising from these impositions.” – Circle of Rights, 2000

Is culture a “universal” right? After all, if there is one thing that culture does, it gives us a sense of who we are as human beings. This, of course, begs the following question: Is culture a “universal” human right? The Universal Declaration of Human Rights (1947), the primary text of the human rights regime, declares that indeed it is: “Everyone, as a member of society, has the right to...cultural rights indispensable for his dignity and the free development of his personality” (Article 22).

Despite the beauty and idealism of this declaration, the crossroads between culture and rights can still be difficult to navigate—culture often appears to stand in the way of rights, just as rights often appear to stand in the way of culture. In most countries of the world, for example, it is illegal for homosexual partners to marry. As such, the religious beliefs or culture of a handful of people stand in the way of marriage rights or human rights of others. At the same time, it also is illegal in many countries for polygamous partners to marry. Could the same thing be said of this situation—that the religious beliefs or culture of a handful of people stand in the way of marriage rights or human rights of others? When examining these kinds of examples, which make evident the many tensions between cultural rights and human rights, we are left asking a dead-end question: How can “universal” cultural rights also be a type of “universal” human
rights, if the decision to embrace one class of rights negates the possibility of embracing another?

Many scholars have chosen to study these tensions as they play out within specific social practices: for example, the legal ban of headscarves, turbans, and beards in France; female genital cutting in Asia and Africa, and bioprospecting in Native American reservations and First Nation reserves. However, I have chosen to study these tensions as they play out between different networks that negotiate norms. This thesis has proceeded and now concludes on the basic assumption that we cannot understand tensions between norms such as human rights and cultural rights until we understand who negotiates these norms in the first place. In taking this approach, this thesis has sought to answer the question of who ultimately benefits from norms of “universal” cultural rights; does it depend upon who negotiated the norm?

**Theoretical Contribution**

Quite simply, norms shape expectations and set standards for how people should behave and interact. Norms can be legal or social, written or unwritten, and can be negotiated by any number of actors. They also carry great currency in the global political arena, where the power of ideas is generally privileged over the power of the sword as a means of affecting change. But again, can norms be truly universal? Moving directly into the global political arena, this thesis has asked the question—who participates in negotiating norms? Are those who participate really capable of comprehending universality, or are they only a contemporary case of dominant powers asserting their own particularity? If, in fact, the negotiation of “universal” norms is nothing greater than the same old story of a dominant power asserting its own particularity, such as in the
historical cases of the Crusades or Colonialism, then we have achieved nothing greater through the peaceable negotiation of norms than a kind of “pseudo-universalism” (Zerilli, 1998) or “false universalism” (Kessler, 2000). Consequently, even while those who negotiate norms may privilege the power of ideas over the power of the sword, those who assert particularism in the name of universalism engender their own kind of violence—not direct, physical violence by the sword *per se*, but a spiritual, emotional, and intellectual violence that comes with pulling up roots from one’s own cultural community and being forced to replant them in another. This is the kind of violence that norms of cultural rights intend to guard against. But does everyone enjoy these same rights? Are these rights truly universal, in that every individual and every group can enjoy them across the entire globe?

This thesis has argued that norms of “universal” cultural rights will privilege either states or people, depending upon the network that negotiates the norm. International networks tend to negotiate *pluralist* norms, which privilege the cultural rights of states. Transnational networks tend to negotiate *solidarist* norms, which privilege the cultural rights of people. In making this argument, this thesis offers a new way of thinking about universalism; namely, that even while negotiations of norms regarding “universal” rights lead to the temporary privileging of one group over another, the notion and rhetoric of universalism are still useful tools that empower both states and people to fight for rights vis-à-vis greater powers within international society. Alternatively, the notion and rhetoric of universalism can also be used as a weapon against weaker people or states. As such, it is always important to examine the power relations among actors in networks that negotiate norms of “universal” rights.
On the topic of examining power relations, it is useful to return to an earlier question—do the religious beliefs or *culture* of a handful of people stand in the way of marriage rights or *human rights* of others? Perhaps the answer depends, as Benhabib (2002) has suggested, upon the *demands* that the leader of a cultural group places upon the lives of others. Indeed, knowing whether a person enters into a marriage through either the demands of others—or through her own self-awareness and free will—is a good first step in answering the question of whether culture is practiced as a universal human right, or whether culture is wielded as a weapon against human rights. The necessity for cultural rights to harmonize with human rights is echoed by interpretations of the *Universal Declaration*. For example, Ayton-Shenker (1995) writes:

> Every human being has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights, however, are not unlimited. The right to culture is limited at the point at which it infringes on another human right. No right can be used at the expense or destruction of another, in accordance with international law.

And so, to answer the question of whether culture is a “universal” human right, or whether culture stands in the way of human rights, we could say it depends upon a person’s self-awareness and free will to participate in cultural practices. As such, rather than assume that a woman wearing a headscarf is an embodiment of either a cultural right, a human right, or a violation of either class of rights, it is important to ask whether this woman wears the scarf because she wants to, or because the leader of her cultural group has demanded that she do so. Likewise, it is important to ask whether she takes off the headscarf because she wants to, or because her state government has demanded that she do so.
Of course, to recognize self-awareness and free will within any person is no easy task, for we all live our lives within the bounds of our own education, experiences, and relationships—the very stuff of culture (Geertz, 1973). The decisions we make are rarely, if ever, made independently of all of these influences. And yet, this thesis points in the direction of what to look for—or perhaps the questions to ask—in trying to determine whether cultural claims contain any element of universality, or whether these claims are merely a temporary assertion of particularity: If you, as the leader of my cultural group, make a claim to your cultural rights, does it violate my own human rights? Does it violate the development of my own personality, my own sense of dignity, my own free will? Does it violate my cultural rights?

Notably, cultural groups and cultural leaders are all around us; we typically express loyalty to more than just one. Nussbaum (2001) proposes that we connect to people and conceive of ourselves through a series of concentric circles: “The first one encircles the self, the next takes the immediate family then follows the extended family, then, in order, neighbors or local groups, fellow city-dwellers, and fellow countrymen—and we can easily add to this list groupings based on ethnic, linguistic, historical, professional, gender, or sexual identities” (p. 9). As this sequence demonstrates, our identities even share connective tissue with our nations or countries—which can, of course, afford us many services that we also call rights, such as education, safety, and health. However, the nation or country, which historically is aligned with the state, also places demands upon our lives. And so we must ask the question—does the state ensure our “universal” human right to culture, or does it place demands upon our lives that actually strips away this right? As Finnemore and Sikkink have noted, while states are the
“primary guarantors” of rights, they are also the “primary violators” (p. 12). As such, we must ask the very same questions of our states: If you, as leaders of states, make a claim to your cultural rights, does it violate my own human rights? Does it violate the development of my own personality, my own sense of dignity, my own free will? Does it violate my cultural rights? As the three case studies of this thesis have demonstrated, these were exactly the kinds of questions that members of the Pimicikamak, CRAN, and even UNESCO had asked of their own situations.

**Empirical Contribution**

This thesis has employed case studies of an international network, UNESCO, as well as two groups that hooked into transnational networks, the Pimicikamak and CRAN. These two different types of networks, both of which hold significant standing in the global political arena, were purposefully selected to challenge a common assumption about who is upholding and defending rights, and who is violating them—namely, these case studies challenge the assumption that non-state actors and civil society are the primary violators of rights, whereas state actors step in to uphold and defend them. On the contrary, these case studies demonstrate that even while states are the primary guarantors, they are not guarantors under all possible circumstances. For states are negotiating norms of “universal” cultural rights that benefit only a select few people, and possibly even violate the very rights they claim to uphold. At the same time, non-state actors and civil society are negotiating norms of “universal” cultural rights that benefit a wider community of people and, and these actors often step in to remind states that they actually are violating the rights they have, ironically, claimed to uphold.
Table 2: Summary of Cases

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Type of Global Network</th>
<th>International Case Study #1: UNESCO</th>
<th>Transnational Case Study #2: Pimicikamak</th>
<th>Transnational Case Study #3: CRAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Actors</td>
<td>State actors</td>
<td>Non-state actors: Indigenous</td>
<td>Non-state actors: Immigrant</td>
<td></td>
</tr>
<tr>
<td>Venue-Switching</td>
<td>WTO → UNESCO</td>
<td>Canadian State → UN Working Group</td>
<td>French State → NAACP</td>
<td></td>
</tr>
<tr>
<td>Issue-Framing</td>
<td>re-framing: cultural diversity</td>
<td>naming and shaming: environmental justice</td>
<td>information politics: demographic data</td>
<td></td>
</tr>
<tr>
<td>Coalition-Building</td>
<td>France &amp; Canada vs. United States</td>
<td>Academia, religious &amp; consumer groups</td>
<td>Academia, civic associations</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Negotiation Tactics</th>
<th>Type of “Universal” Norm</th>
<th>Solidarist</th>
<th>Solidarist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who has Cultural Rights?</td>
<td>States have rights, distinct cultural identities</td>
<td>People have rights, distinct cultural identities</td>
<td>People have rights, distinct cultural identities</td>
</tr>
<tr>
<td>Cultural Right</td>
<td>Different products vis-à-vis other states</td>
<td>Different ways of life vis-à-vis Canadians</td>
<td>Same ways of life vis-à-vis French</td>
</tr>
<tr>
<td>Legal Status</td>
<td>forge a new law</td>
<td>reinforce existing law</td>
<td>change existing law</td>
</tr>
<tr>
<td>Traditional &amp; Novel Cultural Identities</td>
<td>Both: new &amp; old products</td>
<td>Traditional: hunting, fishing, trapping</td>
<td>Novel: media portrayals, demographic data</td>
</tr>
</tbody>
</table>

In the case of UNESCO, Member States negotiated the Convention for the Protection and Promotion of the Diversity of Cultural Expressions, which was formally adopted in 2005. By UNESCO’s own definition, a Convention is a formal norm, which Member States are invited but not required to sign. In the first empirical chapter, I traced the negotiations that led to the adoption of this norm through three interrelated tactics that are commonly used in international negotiations: venue-shopping, coalition-building, and issue-framing. By reviewing these tactics in this particular case, this thesis unearthed several salient points about this particular negotiation. For example, concerns about protecting and promoting cultural diversity were, in fact, rooted in concerns about
cultural trade. For *expressions* of culture such as radio, television, and film that are traded on the international market are not only vehicles of economic value; they are vehicles of cultural value, as well (Voon, 2007).

As Bollier (2005) has said of international trade in cultural products: “Culture is not fungible; its artifacts and practices cannot simply be ‘broken off’ from the whole without starting to harm to the community that created it. That’s why it can be dangerous to regard culture primarily as private property – something that can be ‘owned’ in an absolute sense and valued by its market price” (p.3). As such, France and Canada feared that their cultural artifacts and practices might be “broken off” and sold in the global marketplace, perhaps never to be returned. Consequently, the French and Canadian states feared they must pull up roots from their own cultural communities, so to speak, and replant them in American soil, aka Hollywood.

When France and Canada were not able to successfully negotiate the protection of audiovisual products in the WTO as they had been protected under the GATT, they found a more accommodating venue in UNESCO—where culture is often linked with economic development, but also where cultural products are treated as issues of “culture” and vehicles of identity, and not just like any other products on the global marketplace. The success in building a coalition, led by France, lay in the pluralist approach of the *Convention* in that Member States were not obligated to address matters of cultural rights and cultural diversity beyond their very own borders.

While this issue of trade in cultural products had originally been framed as the *exception culturelle*, or the *cultural exception*, in UNESCO it was framed as *cultural diversity*, which was tacitly understood, at best, to be in danger of disappearing due to the
homogenizing effects of globalization. Notably, while France and Canada pursued this Convention on the premise that cultural diversity faced the advancing threat of free trade in cultural products, and that Member States served the obligation to protect and promote cultural diversity within their respective borders, France and Canada already ranked among the greatest exporters in cultural products (Singh, 2007). Meanwhile, the non-state and civil society actors that had been invited to participate in the negotiation of this particular norm were sidelined, slowly but surely, in their own interpretations of cultural rights and cultural diversity. In the end, the Convention identified cultural diversity as the mark of cultural difference strictly between states, and respected primarily the rights of states to protect and promote this definition of cultural diversity through trade in cultural products. And yet, this Convention did not address how Member States were to protect and promote cultural diversity within their respective borders. The paradox between the notion of “universal” cultural rights and the Convention’s state-driven definition of cultural diversity are embodied in examples such as the French state, which collects copious statistics and sets quotas on French-language cinema, radio, and television, but does not do the same for any other languages spoken within France.

In the cases of the Pimicikamak and CRAN, these minority cultural groups hooked into transnational networks in order to challenge their respective states, Canada and France, on their current treatment of their very own citizens. The Pimicikamak, who had occupied their land long before the formation of the Canadian state and whose continued right to do so was protected under Canadian law, saw their environment suddenly and severely changed by the construction of a hydroelectric dam project. The flooding that resulted from the project changed the Pimicikamak’s economic, social, and
cultural ways of life, which centered largely around fishing, hunting, and trapping. Despite the negotiation of a treaty with the Canadian government to compensate for the losses incurred, as well as more than two decades of lobbying the government to follow the terms of the treaty, the Pimicikamak met with little success in recovering its “traditional” ways of life. Consequently, the community hooked into transnational networks across international organizations, religious organizations, business, and academia to voice their concerns that their rights had been violated.

In contrast to the Pimicikamak, who pressured Canada’s government to respect their rights as they already existed in positive law, the CRAN has pressured France’s government to respect their right in a way that seemed to contradict the country’s Constitution. Along with not collecting statistics on non-French language cinema, radio, and television, the French state also does not officially collect certain demographic data on French citizens themselves, including demographic data on religion, race, and ethnicity. Notably, this “colorblind” policy exists as part of the French state’s republican tradition, which maintains that naming citizens according to certain categories paves the path toward treating certain citizens differently—in other words, it paves the path toward discrimination. However, CRAN has advanced the idea that it is precisely because the French state has remained “colorblind” toward citizens that are black, that the French states discriminates against these citizens and treats them as invisible.

Across the three case studies of this thesis—UNESCO, the Pimicikamak, and CRAN—this thesis has shown that the reason why ”universal” cultural rights norms can look so different largely boils down to a politics of power imbalance between different cultural groups that are different, but still remain in close contact. France and Canada
feared the influence of American or “Hollywood” culture, but not all other states share this same fear. For Cambodia, for example, it is more important to resist the cultural influence of its nearby neighbor, Vietnam. The Pimicikamak feared being squeezed by the grip of Canadian culture, as the Canadian state’s construction of a hydroelectric power plant system forced an indigenous community to give up “traditional” practices of hunting, fishing, and trapping. As such, even while the Pimicikamak had lived on the land that has come to be known as Canada much longer than the Canadian state itself, this indigenous community faced the prospect of being forced to pull up their own roots and replant them in Canadian soil, entering a wage economy in which there were few local resources, knowledge, or skills. And, to extend this metaphor even further, CRAN wanted to plant roots in the soil where it already lived. In striving for a “blind” universalism, France had failed to see that many of its former victims of colonization had become nothing more than modern-day denizens.

Typically, if one doubts whether cultural rights are universal, it is because “cultural rights” have been appropriated by a dominant power to abuse the human rights of others. Not surprisingly, the same holds true for human rights—namely, that if one doubts whether human rights are universal, it is because “human rights” have been appropriated by a dominant power to abuse the cultural rights of others. In undertaking this thesis project, I have aimed to show that cultural rights do not necessarily negate human rights, and human rights do not necessarily negate cultural rights. For people who have the opportunity to negotiate these norms for themselves do find ways to defend their own human rights—that is, to fight for practices of inclusion, liberation, and the purging of violence against themselves—while still honoring and respecting cultural differences.
Therefore, the most significant tension, if any, lies not between norms of human rights and norms of cultural rights. Rather, the most significant tensions lie between different networks that negotiate norms—people who negotiate these “universal” rights for themselves, and people whose “universal” rights are imposed upon them. They also lie among different layers of obligations and rights that are associated with human rights.

It is likely not possible to construct a social or political system in which everyone can negotiate norms for himself or herself. However, I have cast light upon different networks that negotiate norms for the purpose of encouraging a closer look at power structures between these networks, as well as within them. If universal rights are to be found anywhere, they are to be found within the potential power of each human being to step into an awareness of different cultures and ways of life—which, throughout the world, are constantly changing—and to peaceably navigate these changes for him or herself. Along these lines, Shashi Tharoor suggests striking a balance between our present understandings of cultural rights and human rights by:

> [a]dvancing the cultural argument with an escape clause—that is, one that does not seek to coerce the dissenters but permits individuals to opt out and to assert their individual rights. Those who freely choose to live by and to be treated according to their traditional cultures are welcome to do so, provided others who wish to be free are not oppressed in the name of a culture they prefer to disavow” (2000).

In some form or another, boundaries may always stand in the way—national borders, imperfect markets, language, gender, and so on—but by at least identifying different areas in which different people are seeking education and of empowerment, we can take small steps toward universalism by providing the education and empowerment that they
seek. In assessing claims to universal rights, the key is to confirm whether people are making these claims on behalf of themselves and those who share their concerns, or whether people are making these claims on behalf of other people whose needs and aspirations are something quite different. Universalism is not granted by any authority figure from above—by any god, by any sword, or by any state—it can only be granted from within. In the end, it does not matter if one uses the words universal, particular, human rights, cultural rights—what matters is the actions and power relations that these words represent.

**Limitations and Further Research**

These case studies of international and transnational networks involved some limitations and also engendered questions for further research. First, this thesis project faced constraints in that I was limited in my ability to read French, the language in which many of CRAN’s primary documents were written. As such, I relied primarily on news media to obtain information about CRAN’s lobbying and protest activities. Notably, the Cree Nation typically conducts its tribal council meetings in the Cree language, which is a cluster of mutually intelligible dialects that derive from the Algonquin language. While it was not difficult to find official reports, as well as news media, regarding phenomena entailed in the case of the Pimicikamak, the cultural identity of this indigenous community is deeply embedded within the linguistic patterns of Cree, and websites on Cree culture have stated that many terms and concepts do not translate easily. As such, I feel I was limited in understanding the full range of threats to the Cree cultural identity because I could not decipher certain terms and concepts, even while I could read about them in a peripheral sense.
In addition, the focus upon these two types of global networks, and the selection of particular case studies of UNESCO, the Pimicikamak, and CRAN, have effectively juxtaposed states against minority cultural groups—indigenous and immigrant communities. However, as was stated at the beginning of this chapter and throughout this thesis, power hierarchies can exist within all kinds of cultural groups, including within international and transnational networks. Therefore, further research is needed to test for whether minority cultural groups uphold “universal” rights within their own communities, and whether other cultural groups besides minority cultural groups do the same. As Benhabib (2002) has written about the legal ban of headscarves of France, whereby young girls challenged the French state by wearing headscarves in spite of the ban: “Those who saw in the girls’ actions simply an indication of their oppression were just as blind to the symbolic meaning of their deeds as those who defended their rights simply on the basis of freedom of religion” (p. 53). Rather than having passed judgment on whether the ban on headscarves either upheld these girls’ human rights or violated their cultural rights, Benhabib advocates for having engaged the purported victims in the public dialogue that ensued—not only to gauge the girls’ own perceptions about the headscarves ban and their consequent actions, but also to gauge their own tolerance toward expressions of religions other than their own. Only by keeping these processes of democratic dialogue open and ongoing, according to Benhabib, can we begin to see that cultures are complex. In the end, it is not a question of whether a certain cultural expression is preserved, but whether a certain cultural voice is heard, which can take on any number of expressions.
For future studies that employ the question of whether “universal” rights are real or possible, universalism should be examined from the perspective of agency and opportunity, rather than from the perspective of compliance to existing norms. The greatest test for universalism will, in fact, take place at the individual level; we must test for the difference between the norms that people have negotiated for themselves and compliance to their very own norms, rather than people’s compliance to norms that someone else has negotiated for them. In closing, I cannot say whether cultural rights and human rights are one and the same, but I can say the various tensions that arise in negotiating these norms are less about culture and more about power. Any attempts to resolve these tensions must focus upon whether those who negotiate “universal” norms seek to capture power for themselves, or in fact strive to empower others.
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