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**Social norms and agency in world politics**

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## *SOCIAL NORMS AND AGENCY IN WORLD POLITICS*

By Robert O. Keohane\*

### **Abstract**

Social norms, defined as shared expectations about appropriate behavior, are ubiquitous in world politics. Regulatory norms, which prescribe appropriate behavior for state and non-state actors, exist in a variety of issue-areas. Yet these regulatory norms are so closely linked to interests, and so frequently conflict with one another, that the causal impact of norms is often ambiguous. In world politics, norms need advocates, but it is difficult to disentangle the effects of advocacy and interests from those of the norms themselves. The weakness of customary international law, which lacks clear agency, reinforces the conclusion that the significance of regulatory social norms in world politics depends on strategic agents whose interests, whether shaped by norms or not, impel them toward promoting the norms.

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The role of social norms in world politics is contentious. Realists and rationalists have traditionally downplayed their importance, but they have made a strong comeback over the last 25 years as Constructivism has become a major approach to world politics. When we observe world politics, we see many professions of commitment to norms on the part of state leaders as well as members of civil society; but we also observe what Stephen D. Krasner calls “organized hypocrisy,” when professed norms contradict patterns of behavior.<sup>1</sup> It seems clear that no purely materialist ontology can account for the demands of civil society or the policies of many states toward human rights, environmental protection, or even security – beliefs about all of which are clearly socially constituted. But the literature on the role of social norms in world politics is not entirely clear on the causal mechanisms that generate its effects, how norms relate to material interests, or the conditions under which one should expect social norms to be important in world politics. This paper represents an attempt by a scholar sympathetic to the view that socially constituted expectations and beliefs are very important in world politics to sort through claims about role played in this domain by social norms and to articulate a way of thinking about these issues.

Social norms are defined in a variety of ways, but in the political science literature, they are typically seen as *shared expectations, on the part of a group, about appropriate behavior*. Sometimes, but not always, these expectations are associated with the expectation that third parties may enforce the norm by means of social sanctions.<sup>2</sup> John Gerard Ruggie builds on the work of John Searle to argue that norms reflect “collective intentionality.”<sup>3</sup> Normative ideas are constructs produced by the minds of individuals, but within these minds, intentionality “exists in

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<sup>1</sup> Krasner 1999.

<sup>2</sup> Robert Ellickson defines a social norm as “a rule governing an individual’s behavior that third parties other than state agents diffusely enforce by means of social sanctions” (Ellickson 2001: 35). But many prominent definitions omit sanctions. Martha Finnemore (1996: 22) defines norms as “shared expectations about appropriate behavior held by a community of actors.” Peter Katzenstein, Ron Jepperson and Alexander Wendt define norms as “collective expectations about proper behavior for a given entity.” (Katzenstein 1996b: 54.) Abram and Antonia Chayes use different language but the point is similar: for them, norms are “prescriptions for action in situations of choice, carrying a sense of obligation” (Chayes and Chayes 1995: 112). However, Deborah Prentice, drawing on a large literature in psychology, differentiates between group beliefs and individuals’ *beliefs* about group beliefs, which are often mistaken. Social norms defined as “representations of where one’s group is located or ought to be located on an attitudinal or behavioral dimension (Prentice 2009: 5) often do not match up with the actual beliefs of members of one’s group. That is, “shared expectations” conceal the fact that members of groups make incorrect inferences about the expectations of others in the group: the sociological norm does not match psychological norms.

<sup>3</sup> Searle 1995; Ruggie 1998.

the form, ‘we intend,’ and ‘I intend only as part of our intending.’” Norms therefore implicate issues of group identity. As Peter J. Katzenstein emphasizes, norms that systematically affect behavior are historically conditioned, institutionalized and largely taken for granted, not infinitely malleable but subject to change as a result of political choices and processes.<sup>4</sup>

Norms – collective expectations about appropriate behavior – should not be confused with preferences – relative valuations by individuals of potential outcomes. Asked whether he prefers honey or condensed milk on his bread, Winnie-the-Pooh blurts out: “both.” Realizing that he has violated an interwar upper-middle-class British norm against seeming greedy, he then says “but you can forget about the bread.” His first statement indicates his preferences; his follow-up remark expresses his understanding of the prevailing norm.

Norms should also not be confused with principled beliefs, or worldviews.<sup>5</sup> Norms are collective expectations; beliefs are held by individuals. It is true that some norms – such as norms that basic human rights should be respected – indeed reflect widely shared and intensely held principled beliefs or worldviews. But other norms – for instance, about international shipping lanes -- are matters of custom and convenience, not morality. It follows that we can distinguish norms from ideologies, which are beliefs about the superiority of one set of social practices, or nationalism, the belief that a particular people should have a state and, in some cases, that this people is uniquely superior to their neighbors. Since beliefs may specify the content of appropriate behavior, they provide an important context for norms; but norms, as collective expectations about appropriate behavior, are distinct from beliefs.<sup>6</sup>

To interrogate rather than assume the position that norms are important is, as noted, not in the least to adopt a materialist perspective. Individual beliefs could be crucial to behavior – such as the principled belief that slavery is unjust – without norms – collective expectations about appropriate behavior – being important at all. This paper is about the role of social norms not about beliefs in general. Insofar as I question some claims about how norms operate in world politics, I do not thereby imply that beliefs are unimportant, that material factors dominate, or that norm-following is necessary opposed to seeking material advantage. Indeed, political

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<sup>4</sup> Katzenstein 1996a: 18-19; 30.

<sup>5</sup> Goldstein and Keohane 1993.

<sup>6</sup> For a brilliant discussion of beliefs – and of symbolism – in world politics see O’Neill 1999.

actors driven by passionate beliefs may be more inclined than those seeking purely material gain explicitly to disavow contemporary norms of appropriateness. For instance, anti-slavery activists in the United States in the 1850s sought to transgress established norms both in the United States Congress and in society at large, while New England textile manufacturers favored “moderate” policies designed to maintain their relationships with Southern suppliers of cotton.

Yet norms do not “float freely” any more than ideas do.<sup>7</sup> On the contrary, as Elizabeth Shakman Hurd argues, “norms cannot be analyzed outside of the structures of power and specific embodied social practices in which they are embedded and through which they are expressed.”<sup>8</sup> Throughout this discussion I will analyze the role of norms within their political context.

## **I. Constitutive and Regulatory Norms**

Norms are conventionally characterized as constitutive or regulative. Constitutive norms define the identity of actors or the cultural setting that is taken for granted by the actors, whereas regulatory norms prescribe appropriate behavior. This distinction, however, does not divide norms into two clearly separated categories, but rather rests on ideal types. In practice, identities may imply appropriate behavior, and perceptions about appropriate behavior may be premised on assumptions about identities. The constitutive-regulatory distinction is useful but should not be reified.

### *Constitutive Norms at Three Levels of Analysis*

Norms can operate at three distinct levels: domestic, international, and transnational. Domestically, constitutive norms play a role in what Searle calls the “social construction of reality,” and Ruggie emphasizes that “the specific identities of specific states shape their perceived interests.”<sup>9</sup> Indeed, there is general agreement that the politics of local and national societies cannot be understood without understanding the role of social norms.<sup>10</sup> John Meyer has led a long-term research program, involving many investigators, arguing that norms of world society have spread across the globe, leading to organizational forms that cannot be explained

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<sup>7</sup> Risse 1994.

<sup>8</sup> Shakman Hurd 2008: 149.

<sup>9</sup> Searle 1995; Ruggie 1998: 14.

<sup>10</sup> Ellickson 1991; Hechter and Opp 2001a.

functionally but that reflect widespread agreement on appropriate forms.<sup>11</sup> Educational systems, science agencies, and other organizations display remarkable similarity (“isomorphism”) across societies at widely different levels of economic development. The organizational and symbolic aspects of these organizations may be “decoupled” from their actual performance, leading to what Stephen Krasner might call “organized hypocrisy” and raising potential questions about the impact of the global norms on the ground; but nevertheless, these organizational practices are evidence of what Ryan Goodman and Derek Jinks call “global scripts” produced through processes of “acculturation.”<sup>12</sup>

Although norms are undoubtedly important in small communities, and in national societies, there is more controversy about their role in world politics. Norms are expectations about *appropriate behavior*, so if they are to have important impacts on behavior, some suspension of ends-means calculation is implied. Yet the empirical literature on world politics broadly portrays most state action as strategic. There is some habitual behavior and some altruism. But on the whole, states seek to achieve their own purposes by following strategies involving ends-means calculations. Their goals may be generated by material factors, as emphasized in the political economy literature; by power relationships, as emphasized by students of the distinctive behavior of great powers; by the institutionalization of values, as stressed in the literature on the Democratic Peace; or by normative beliefs, as pointed out by work on human rights.<sup>13</sup> Furthermore, as a general rule norm entrepreneurs themselves “are extremely rational and, indeed, very sophisticated in their means-ends calculations about how to achieve their goals.”<sup>14</sup>

At the international (or interstate) level, the study of international constitutive norms focuses on what Hedley Bull called *international society*, as compared to the “international system.” For Bull, an “international society” exists when “a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the

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<sup>11</sup> Meyer 1997.

<sup>12</sup> Finnemore 1996; Krasner 1999; Goodman and Jinks 2003.

<sup>13</sup> For example, Keck and Sikkink 1998; Simmons 2009.

<sup>14</sup> Finnemore and Sikkink 1998: 910.

working of common institutions.”<sup>15</sup> A mere international system, by contrast, involves interactions without such common values. At the level of transnational relations, or what has become known as *transnational civil society*, norms are constructed through interactions among non-governmental actors across national boundaries. Like other societies, transnational civil society develops norms and practices distinctive to it, which are likely to be only imperfectly reflected in state behavior.

Discussing international and transnational norms, Alexander Wendt seeks to show that our commonsense assumptions about world politics in the contemporary world are deeply Lockean. This Lockean starting point “depends on a particular cultural background which can be taken as given for certain purposes, but without which we cannot make sense of modern international politics.” Similarly, Richard Ned Lebow claims that the character of world politics in different historical epochs is affected by the relative priority of appetite, reason, and “spirit” – or honor – in society. But one of the outstanding features of contemporary global society is the wide variety of values and practices – generated by traditional culture and often by religion – that coexist. Constitutive norms seem to be strong for many ethnic groups, co-religionists, or members of nation-states, but they are weak at larger scales, even in a highly institutionalized region such as the European Union.<sup>16</sup>

The weakness of norms at the international and transnational level should not be surprising, since world politics is dominated by strategic interactions among organizations – powerful, coherent states -- that have independent sources of legitimacy, funding, and means of coercion; and between these states and other organizations, whether multilateral or transnational, which also have resources of legitimacy and often of funding. States are constituted according to a variety of norms; they have different organizational arrangements; and they are staffed by people with beliefs that vary cross-nationally. Furthermore, they often have different material interests, and they all seek some margin of security that may appear to threaten their competitors. They therefore have very strong reasons to act according to instrumental rationality, to achieve their interest-based objectives. In a very competitive and dangerous world, failure to follow instrumental rationality can even cost a state its autonomy or its very existence. Similarly, firms

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<sup>15</sup>Bull 1977: 13.

<sup>16</sup>Wendt 1999: 296, see also p. 259; Lebow 2008; Norris 2003.



or NGOs that fail to respond strategically to changes in their environments, or lose sight of their interests, are likely to do poorly. Since at the international and transnational levels norm-following behavior is challenged by the logics of strategic interaction and instrumental rationality, we should be skeptical of analogies from the domestic domain to world politics.<sup>17</sup>

Nevertheless, even for rationalist neo-utilitarian research programs, constitutive norms can be seen as important in world politics— not because they generate a coherent world culture but because they create *common knowledge*, which is essential for coordination.<sup>18</sup> Even if strong international and transnational constitutive norms are lacking, knowledge of the norms that various agents and groups hold is important in affecting the strategies that players employ. From this perspective, constitutive norms serve as an important source of background knowledge, which on most important issues does not *determine* behavior through a logic of appropriateness, but exercises a significant impact on actor strategies.

#### *The Ubiquity and Ambiguity of Regulatory Norms*

Global regulatory regimes prescribe uniform or at least comparable behavior for all participants in them, taking as given a wide variety of constitutive norms at the domestic level, and assuming also some common knowledge about international and transnational norms and practices. Such regimes are pervasive in contemporary world politics in areas as diverse as global banking, trade, atomic energy, environmental policies, and human rights. I define regulatory norms as shared expectations on the part of organized groups about appropriate behavior for themselves and their counterparts toward one another. These rules can affect the behavior of states or firms.<sup>19</sup> Some of these norms are highly value-laden or even moralized — such as human rights norms. Others are purely matters of convenience or efficiency, which applies to norms about banking practices or technical barriers to international trade. Regulatory norms that are highly value-laden seem “deeper” than norms adopted for reasons of convenience: they are more likely to implicate identities, and to be closer to the constitutive end of the

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<sup>17</sup> Waltz 1979.

<sup>18</sup> Katzenstein et al. 1998: 682.

<sup>19</sup> For examples see Mitchell 1994, Barton et al. 2007, Simmons 2009.

spectrum. But shallower norms that are not value-laden – such as norms governing air traffic control practices – may be easier to universalize: that is, to broaden.<sup>20</sup>

Descriptively, there is no doubt that such international and transnational norms are deeply embedded in the fabric of world politics.<sup>21</sup> Much activity in this partially globalized world has to be formally or informally coordinated, and it is difficult to imagine how such coordination could be accomplished without shared expectations about appropriate behavior. Without dwelling on theoretical issues, a recent volume on “the politics of global regulation” refers to norms of regulatory standard-setting; collective action clauses for sovereign debt; personal criminal accountability for crimes committed by state officials; corporate social responsibility; and judicial liberalization in the World Trade Organization.<sup>22</sup> Understanding norms is at the heart of the work of international legal scholars, and at the other end of the analytical spectrum, even Realists discuss norms in world politics.<sup>23</sup>

That norms are everywhere, however, is not to settle the question of their impact on state behavior. Norms can be the result of political processes in which interests, existing institutions, and prevailing ideas are the critical causal forces. Since norms can be endogenous to interests, as well as other factors, they may not play a causal role in outcomes even though they are empirically associated with these outcomes. When norms are important, furthermore, they are typically advocated by organized agents, so it is unclear to what extent the norms as such has had an impact, and to what extent this impact depended on agents advocating norms but often with other agendas as well. Section II focuses on issues of endogeneity and agency.

Norms frequently come into conflict with other norms. Ming China had what Iain Johnston calls “cultural realist” norms, which are the opposite of the norms against violent

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<sup>20</sup> I thank Amy Zegart for making this point in a comment on a draft of this paper.

<sup>21</sup> Finnemore 1996a and 1996b, Katzenstein 1996a, Wendt 1999.

<sup>22</sup> Mattli and Woods 2009. It should not be surprising to see students of institutions such as Mattli and Woods exploring the role of norms, since information and beliefs are so important for institutionalist theory. The strategy of institutionalist theorists has been to complicate the neo-realist study of interests and power by enriching its context: exploring how beliefs shape interests, how economic factors and transnational relations alter interests and power, and investigating the impact on outcomes of variations in information and institutions. Social norms can easily be added to this analytical framework without contradicting the basic approach of layering complexity on top of the elegant and too-spare models of neo-realism.

<sup>23</sup> On norms in international law, see Bodansky (2009), chapter 5. For Realist views, see Morgenthau (1948/1967: 533) and Waltz (1979: 77-79).

conflict now embodied in the UN Charter.<sup>24</sup> Kenneth Waltz discusses the norm of “self-help,” which implies the possibility of war, but there is also the norm (contested as it may be) of non-first use of nuclear weapons.<sup>25</sup> The norm of anti-colonialism can conflict with the norm of sovereignty when a ruling elite claims sovereignty but a group within the country regards itself as colonized.<sup>26</sup> The potential for conflict is increased by the fact that many norms are inherently vague or logically inconsistent, partly because interested parties have sought to gain room for maneuver by obfuscating them.

Indeed, there are arguably so many ambiguous and conflicting norms that the implications for behavior are often unclear. As Paul Kowers and Jeffrey Legro write, because so many norms are relevant to behavior simultaneously, “it is difficult to predict which norms will be most influential. One can always identify, *post hoc*, a norm to explain a given behavior.”<sup>27</sup> The plethora of ambiguous and conflicting norms in world politics means that even fairly well-established norms are often violated. The result, in Krasner’s phrase, is “organized hypocrisy,” which involves a “decoupling between principles and practices.” For him the norms associated with sovereignty – such as respect for the territorial integrity of states – do not predict actual practices. Behavior can be explained instead as a set of broadly rational responses to structures of interest and power in a competitive world.<sup>28</sup> Section III discusses the issue of conflicts among norms.

It is often difficult to disentangle the impact of interests from that of norms. Doing so may be facilitated when groups strongly advocate normatively-driven policies in competition with agents seeking more traditional economic and political goals. But in such situations, the impact of agents may be confused with the impact of norms, *per se*. One way to disentangle the norms from their advocates is to explore customary international law, which consists of relatively well-specified norms that are supposed to shape state behavior but that do not

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<sup>24</sup> Johnston 1995.

<sup>25</sup> Schelling 2005; Tannenwald 2007.

<sup>26</sup> Although a norm of national self-determination implies the right of peoples under certain circumstances to be independent from the state that is currently exercising sovereign authority over them, this norm has usually been regarded by international bodies as applying only to external colonies – separated by water from the metropole – not to internal ones (Hechter and Borland 2001: 204).

<sup>27</sup> Kowers and Legro 1996: 486.

<sup>28</sup> Krasner 1999: 226, 59.

necessarily, at any given time, have significant advocacy groups mobilized behind them. Section IV takes up this subject of customary international law.

It will become clear throughout this paper that the role and impact of social norms in international relations are deeply contextual. Norms in world politics exist in the context of intense strategic interaction, in which players following a logic of consequences can be expected to do better, competitively, than players following a logic of appropriateness.<sup>29</sup> Whether norms matter depends on pressures from advocacy agents and on whether governments have interests in supporting normative arguments – sincerely or not. Norms and their advocates seem to have the greatest impact in democracies, where transnational linkages are strong, and in states that are asymmetrically dependent on democracies. The Conclusion briefly presents these conjectures and points out that contemporary globalization, which has created benign conditions for the operation of social norms, will not necessarily continue indefinitely. Norms are alive and well in world politics today, but their content and impact depend on political structures of power and interests as well as beliefs.

## **II. Norms, Interests and Agency**

When I was studying politics in the United Nations General Assembly for my Ph.D dissertation, a shrewd young diplomat informed me that at the United Nations, “the meal of self-interest is served up on a tray of universal principles.” He was alerting me to the organized hypocrisy that Krasner has analyzed so well. However, he was understating the problem, since typically diners are able to distinguish the meal from the tray on which it is served. Social science observers have more difficulty in assessing which sources of policy are normative, and which rooted in self-interest. The most convincing examples of norms making a difference in world politics are those in which identifiable agents advocate and lobby for the implementation of norms in state policy.

### *The endogeneity of interests and norms*

Interests, which, once again, reflect values and beliefs as well as material desires, may generate apparent norms. Leaders of states whose policies are unaffected by prevailing norms

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<sup>29</sup> For the concept of the logic of appropriateness see March and Olsen 1998.

may perceive that their interests – generated by desires for such values as security, power, or economic welfare -- can be pursued more effectively with the help of norms that facilitate advantageous cooperation. In these situations, they may act to create, reinforce, or follow supportive norms. Their normative claims have a functional explanation: they enhance states' abilities to realize their interests, for instance by providing focal points or enhancing the credibility of sanctions against deviance.

This is what is known as the instrumental view of norms, according to which “norms tend to emerge to satisfy demands to mitigate negative externalities or to promote positive ones.”<sup>30</sup> When norms are endogenous to interests in this sense, we will observe numerous instances of norm-violation and organized hypocrisy, because interests change over time. When their interests change, powerful states have incentives to violate norms to which they adhered under different circumstances. In the 19<sup>th</sup> century, for example, the United States repeatedly broke commitments to Indian tribes, when those commitments had become inconvenient for a country with rapidly growing power and an aggressive, expanding population. An old Sioux declared of the United States in 1891: “They made us many promises, more than I can remember; but they never kept but one. They promised to take our land and they took it.”<sup>31</sup> Krasner argues that “creditors have routinely compromised the autonomy of weaker lenders,” thus violating the norm of Westphalian sovereignty, and that military intervention in the 19<sup>th</sup> century was accounted for not by principles but by “variations in power and interest.”<sup>32</sup> Recently, Catherine Weaver has identified such organized hypocrisy in the activities of the World Bank, since its proclaimed objectives conflict with organizational interests and routines.<sup>33</sup>

To Realists, these observations are not surprising. Hans J. Morgenthau long ago articulated the key interpretive principle of Realism: that the actions of statesmen are shaped by considerations of interests and power, and that the observer can “look over his shoulder... read and anticipate his very thoughts.”<sup>34</sup> Claims that behavior is motivated by normative commitments are inherently suspect in this view, since interests will typically prevail over norms while being masked by normative claims.

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<sup>30</sup> Hechter and Opp 2001b: xiii.

<sup>31</sup> Utley 1984: 251.

<sup>32</sup> Krasner 1999: 151; 183.

<sup>33</sup> Weaver 2008.

<sup>34</sup> Morgenthau 1948/1967: 5.

If as Realists observe, norms may be endogenous to interests, the reverse can also be true: interests can be endogenous to norms, when norms that are relevant for international and transnational relations have been *internalized*. States, and other actors, for whom norms have been internalized behave in ways that their leaders and publics regard as appropriate. Internalization may reflect domestic norms – as when beliefs deeply held in domestic society have implications for foreign policy – and may also reflect norms that are widely held by elites that communicate about them on a transnational basis. These norms, however, do not appear automatically; typically, they are promoted by advocates. When citizens adopt normative views and demand that their leaders pursue policies that are based on them, norms can have a genuine impact: not by trumping some abstract notion of the national interest but by shaping the interests of politicians. Or bureaucrats may be socialized to accept certain norms. Jeffrey Checkel and his colleagues found that socialization in Europe has taken place largely through domestic processes: “deeply entrenched social discourses, previous bureaucratic experience, or the structure of national institutions, for example.”<sup>35</sup>

Scholars who emphasize the role of norms often stress internalization.<sup>36</sup> This role of norms is best-established in the domain of human rights. Democracies behave differently on human rights than non-democracies. In one of the most compelling demonstrations of the role of democratic norms, Beth Simmons has shown that democracies are markedly more likely than non-democracies to ratify the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The other ratification patterns that she uncovers are also consistent with the idea that both prevailing norms and domestic institutions affect the costs and benefits of ratification of, and compliance with, international human rights agreements.<sup>37</sup> Clearly, in the human rights area both the transnational diffusion of norms – setting standards regarded widely as appropriate – and domestic norms and practices – affecting how human rights standards are implemented – play a role in state behavior.

Goodman and Jinks usefully distinguish two different mechanisms for internalization. The *persuasion mechanism* operates when some actors convince others of the intrinsic value of certain norms, and also sometimes of the validity of the meta-norm that violations of these norms

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<sup>35</sup> Zurn and Checkel 2005: 1068.

<sup>36</sup> Franck 1990.

<sup>37</sup> Simmons 2009: 71-75.

should be punished. Those who are persuaded then believe that certain institutions and practices are legitimate and therefore act to institute or maintain them. *Acculturation*, by contrast, refers to “the general process by which actors adopt the beliefs and behavioural patterns of the surrounding culture.”<sup>38</sup> Responding to acculturation, leaders may internalize these norms only partially or not at all, while they act as if they do accept them. In the terminology of this school of theorizing, norms may be more or less “decoupled” from actual practices. Even egoistic, self-interested leaders who do not internalize norms may pursue norm-conforming behavior under these circumstances.

When norms have been internalized through either process, the preferences of actors – on the basis of which they make decisions and which may also be described as their “interests” -- are endogenous to norms. For example, Canada can be said to have an interest in the protection of human rights worldwide, since it has a strong preference for protection of human rights that it is willing to pay something to see implemented. Under these conditions, norms create preferences either by establishing leaders’ values or by affecting the values of leaders’ constituencies. That is, when norms are internalized, norms shape interests rather than *vice versa*. Not only can the internalization of norms generate demands for certain policies; it may also lower the cost of supplying those policies. For instance, Canada faces lower costs in ratifying and complying with international human rights agreements that reflect those norms, than do states whose institutions do not incorporate those norms.

The contrast between norms that are endogenous to interests and interests that are endogenous to norms is of course only an ideal type, portraying two pure versions of the complex relationships that exist between interests and norms. Scholars who discuss norms often *assume* that interests are either endogenous or exogenous to norms, but there is little reason to believe that many situations purely fit either ideal type.<sup>39</sup> The dichotomy I have drawn is conceptually clear but actual behavior could fall at various points along a continuum between two poles: one in which norms are fully endogenous to interests (preferences) and the other in

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<sup>38</sup> Goodman and Jinks 2008: 726.

<sup>39</sup> For instance, Katzenstein (1996a: 18) defines regulatory norms as standards of behavior “that shape interests” and constitutive norms as identities “that also define interests and thus shape behavior.” The entire analysis of Goldsmith and Posner, on the contrary, assume that state interests are exogenous to international law, thus assuming their conclusion: that international law is the result of “states maximizing their interests” (Goldsmith and Posner 2005: 42).

which interests (preferences) are endogenous to norms. In actual practice, interests may affect norms simultaneously with norms affecting interests, and changes in both norms and interests can affect relevant beliefs. Thus the degree to which norms shape interests or *vice versa* in a given situation is an empirical as well as theoretical question that cannot be settled by assumption. As Joel Trachtman says about Jack Goldsmith and Eric Posner's argument, "legal obligation and self-interest are not mutually exclusive categories."<sup>40</sup>

Sometimes norms and interests have separate sources and only come into contact when they have different implications for policy decisions. That is, they are exogenous to each other. It is here that conflicts between norms and interests become most apparent. For example, the United States is allied with Egypt, whose government it has supported for over thirty years; but that government has been continuously undemocratic and repressive during that time. Neither norms nor interests have trumped. When high United States officials, accustomed to discoursing on the virtues of democracy, speak in Egypt they find themselves caught between their professed norms and their geopolitical interests, and the result is typically somewhere between awkward and embarrassing, revealing the organized hypocrisy at the root of the relationship.

For a specific example of how norms and interests can interact, consider the International Whaling Commission (IWC). This international organization was founded in 1946 to induce cooperation that would achieve the economic objective of attaining maximum sustainable yield in whaling. Cooperation at this time seemed in the mutual interest of states whose nationals hunted whales for food and oil. However, the IWC has become an organization dedicated to banning whaling altogether. This change took place as a result of normative advocacy by transnationally organized groups that succeeded in persuading publics that sentient creatures such as whales should be protected. Public sentiment persuaded politicians in these democracies to change their views of state interests and to employ state resources to build a huge anti-whaling coalition. The major whaling states such as Japan, Norway, and Russia continued to pursue their whaling interests and rejected the new norms, but were outvoted. A previous discourse that naturalized hunting whales for food and oil was replaced by a discourse that emphasized saving

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<sup>40</sup> Trachtman 2008: 113. I am indebted to Philip Petit for comments that helped me clarify this point.



whales. Reflecting the power of this new discourse, the interests of democratic politicians changed: these interests were endogenous to the norms internalized by their publics.<sup>41</sup>

But human rights protections and whaling are issue-areas in which vital interests are not at stake for many countries. Established democracies need not fear intrusions into their polities on grounds of human rights, and most members of the IWC do not engage in whaling at all. It becomes much more difficult to sort out the impact of norms when state interests play a major role. Leaders of states operate in a strategic context in which pursuit of their preferred values often competes with other goals. Power, security, and other national interests are obvious values that may conflict with norms. Furthermore, in democratic societies and some non-democratic ones, elites compete for power. Elites that are striving for power can appeal to a general norm that typically trumps the norm of fulfilling common global values: serve the national interest. In a world in which states ultimately have to rely on “self-help,” the pursuit of normative goals often takes a back seat to the pursuit of independently determined self-interest. The more competitive the international arena at the time – and therefore the scarcer the resources at the disposal of states – the more costly it will be to let normative values prevail over self-protection and aggrandizement, and the more difficult it will be to establish that a major role is played by social norms.

### *The Problem of Observational Equivalence*

As we have seen, the key conceptual issue is the relationship between norms and interests. Are norms created by interests; are interests themselves generated by normative commitments; or are the sources of norms and interests separate, if not equal?

Unfortunately, when norms are espoused by state leaders, it is very difficult to distinguish interests that are endogenous to norms from norms that are endogenous to interests. When norms are widely shared or at least given lip service, leaders not driven by normative commitments will seek to mimic leaders who have internalized norms. This problem of observational equivalence bedevils many attempts to show that norms are important sources of behavior in world politics.

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<sup>41</sup> See Epstein 2008 for a thorough recent account and Peterson 1992 for an earlier one.

For example, in his argument for the importance of norms, Alexander Wendt asks why the United States does not invade the Bahamas. He acknowledges that there may be good self-interested reasons for refraining from such an invasion, but he asserts his view that US restraint “stems from having internalized sovereignty norms so deeply that the US defines its interests in terms of the norms, and regulates its own behavior accordingly.”<sup>42</sup> But if this were so, why did the United States invade Grenada and Panama, in the Caribbean area, during the 1980s? It may well be that the sovereignty *status quo* becomes “taken for granted,” but surely this is partly because of the self-interest that dominant powers have in such a *status quo*.

Similarly, Iain Johnston has claimed that “the socialization of (Chinese) reform elites in capitalist ideology...helps explain the leadership’s push for China’s integration in the major capitalist institutions today.”<sup>43</sup> He points to China’s increasing emphasis on multilateral institutions as evidence. But a theory based entirely on material interests would have little difficulty explaining why a state that has become highly dependent on foreign trade and investment sought to join the World Trade Organization, or why a state that dominates its region but does not seek territorial gains against its sovereign state neighbors seeks good relations with them (in this case with ASEAN). Socialization in this case implies normative conversion, and acculturation would imply mimicry. But from an instrumentalist standpoint it seems much more plausible that China’s material self-interest – in trade, investment, and other benefits derived from participation on the world economy and from being on friendly terms with its neighbors -- accounts for its new interest in multilateral institutions.

The problem is that conformity to the norms of a group can reflect internalization of these views, conformity to prevailing views in order to blend in, or simply pursuit of self-interest without either internalization or acculturation. Chayes and Chayes argue that the “new sovereignty” consists not so much of legal independence but of status, which can only be established through participation in international regimes. If others participate, the state must do so as well to vindicate “its existence as a member of the international system.”<sup>44</sup> This proposition implies that states whose leaders or publics have not internalized regime norms may

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<sup>42</sup> Wendt 1999: 289. Wendt’s three normative mechanisms are coercion, self-interest, and internalization. He ignores group conformity. If coercion or self-interest is dominant, norms do not play a causal role.

<sup>43</sup> Johnston 2008: 211.

<sup>44</sup> Chayes and Chayes 1995: 27.

participate, and therefore benefit, by mimicking states that have internalized those norms. Purely self-interested states have incentives to engage in what Simmons calls “social camouflage.”<sup>45</sup>

To understand the difficulty of sorting these issues out, consider one of Simmons’s striking findings: that even controlling for a wide variety of other factors, state behavior is often partially explained by the behavior of regional neighbors. In 2000 she found that compliance with state commitments to maintain open current accounts, under International Monetary Fund rules, was affected by the rate of compliance with those rules by a state’s regional neighbors. More recently she has discovered that with respect to three or four of the major human rights treaties, ratification clusters by region: whether a state’s regional neighbors ratify a treaty affects ratification rates.<sup>46</sup> These findings raise two questions. First, should we interpret these patterns of behavior as reflections of a convergence of values (socialization) or strategic behavior (social camouflage)? Second, if the initial behavior was strategic, what impact does nominal acceptance of a norm, even hypocritically, have, if any, on long-term changes in state behavior?<sup>47</sup>

In her book, Simmons ingeniously uses regional effects over time to “pry apart strategic from normative behavior.” She argues that the strategic-social camouflage argument has stronger support than the internal socialization argument even in a domain in which one might expect strong normative effects. States engage in what Simmons calls “rationally expressive” action: states pursue their values in world politics but do so strategically to maximize benefits to themselves, given these values, their material interests, and their domestic institutions.<sup>48</sup>

### *How do Norms Have an Impact? The Issue of Agency*

As I have emphasized, world politics is a domain of *strategic interaction*. That is, optimal strategies depend on others’ policies, and participants need to be concerned not merely with reaching mutually beneficial agreements but with avoiding exploitation by their partners.

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<sup>45</sup> Simmons 2009.

<sup>46</sup> Simmons 2000; Simmons 2009: 78.

<sup>47</sup> The language of sociological institutionalism refers to “public conformity disconnected from private, local practices” as “decoupling.” Advocates of acculturation theories seek to identify causal mechanisms by which decoupling is reduced over time, and argue that large gaps between nominal rules and state practice “may well suggest the globally legitimated status and normative power of the rule” (Goodman and Jinks 2008: 745). Be that as it may, decoupling does not provide evidence that the norms in question have strong impacts on behavior, and could be interpreted as implying the reverse.

<sup>48</sup> Simmons 2009; see p. 80 and pp. 56 ff.

We need to think about regulatory norms in world politics in the context of this ongoing interaction and bargaining.

World politics does not constitute a cohesive society with consensual norms that are transmitted to children through socialization and reinforced by personal social disapproval as expressed in gossip. For norms to be consequential in world politics, therefore, they need advocates. For instance, human rights activists, often in powerful countries, operate both domestically and transnationally. They internalize norms of human rights, form advocacy groups, and lobby their governments to pursue pro-human rights policies.<sup>49</sup> When they overcome resistance and generate changes in policy, as occurred with the treaty banning land mines in the 1990s, it seems clear that norms have made an impact. Or is it that agents bearing norms have had an impact?

Analytically, we can specify four different patterns of normative agency: 1) states acting as advocates; 2) non-state organizations acting as advocates; 3) international organizations as norm-agents; and 4) norms as focal points for decentralized networks of organizations and individuals.

*States as advocates.* States sometimes commit themselves to normative positions that then have implications for their policies, and that may imply substantial human and material costs. For example, in 1816 Great Britain bombarded Algiers to suppress piracy, at a cost of over one hundred men killed and over six hundred wounded – more as a proportion of those engaged in the battle than at Trafalgar. Yet Britain did not have significant material interests at stake: its shipping was not seriously disrupted by piracy and it did not have territorial objectives in Algiers. Its actions are more plausibly explained by invoking social norms. Britain was seeking to persuade other European governments to help it abolish the African slave trade, and feared being accused of double standards by not acting to end the “white slavery” practiced by the corsairs. The norms that conferred legitimacy on Britain’s leadership also mandated action against the pirates.<sup>50</sup>

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<sup>49</sup> Keck and Sikkink 1998.

<sup>50</sup> Lowenheim 2007: chapter four.

*Transnational activism.* Sikkink and her colleagues have shown, using a wide variety of examples, that transnational activists have often not only brought issues to the attention of governments and other organizations, but have exerted influence on governments.<sup>51</sup> Such campaigns are most effective when their advocates have sympathizers at high levels of government – people who have internalized the same norms. When powerful sympathetic governments join the activists, attempts to “shame” other states into conformity with better human rights practices can be combined with material sanctions, such as trade and aid, to do so.<sup>52</sup> These pressures, and their legalization in human rights treaties, affect domestic policy agendas and provide opportunities and resources for mobilization by domestic groups – but only when there is some domestic space for such activity. Simmons, for example, has amassed systematic evidence supporting a view earlier advocated by Andrew Moravcsik: that human rights treaties have their most important impact on transitional democracies, which have not yet institutionalized strong human rights norms but that do not repress dissent. She infers that much of the impact of human rights treaties comes through mobilizing domestic groups: that is, treaties create and empower norm-oriented agents.<sup>53</sup>

*International organizations as conveyers of norms.* International organizations, sometimes pressed by states or transnational activists, are major promoters of norms in world politics: indeed, much of what they do is to advocate and seek to formulate regulatory norms in a wide variety of issue-areas. Jeffrey Checkel has emphasized that “international institutions are social environments; participating in them may socialize states and state agents.” Michael Barnett and Martha Finnemore focus more on international organizations as bureaucracies: “IOs are eager to spread the benefits of their expertise and often act as conveyor belts for the transmission of norms and models of good political behavior.”<sup>54</sup>

*Norms as focal points.* Internationally as well as domestically, people who work closely together on a variety of problems may find that they can be most effective if they accept a common set of social norms. That is, social norms can facilitate the operation of decentralized

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<sup>51</sup> Keck and Sikkink 1998; Risse, Ropp and Sikkink 1999.

<sup>52</sup> Hafner-Burton 2009.

<sup>53</sup> Simmons 2009; Moravcsik 2000.

<sup>54</sup> Checkel 2005 815; Barnett and Finnemore 2004: 33.

social networks, such as the governmental networks discussed by Anne-Marie Slaughter.<sup>55</sup> In the European Union (EU) and other international organizations, for instance, observers have identified the growth of informal norms that are at odds with the formal ones. Votes are often not taken even though elaborate procedures call for voting, as in the Montreal Protocol Fund that controls allocations for developing countries to deal with ozone-depleting chemicals. In the EU, the Presidency performs functions that are almost entirely structured by informal norms.<sup>56</sup> More generally, groups of like-minded people, such as scientists, may develop an “epistemic community,” which can generate tendencies to conform to group thinking.<sup>57</sup>

The crucial point is that when we ask about the impact of norms, we necessarily ask about the agents that promote the norms: norms have their greatest impact when they are promoted by organizations or persistent networks of individuals and groups. Normative activity has the greatest long-term impact when agents – states, non-governmental organizations, international organizations, or domestic groups -- find the international norms strategically relevant for their own purposes. Norms do not act by themselves, but they both shape the conceptions of self-interest of agents and can be convenient, or inconvenient, as agents pursue their interests.

### **III. Conflicts Between Norms**

Even in situations where norms have an impact, that impact may be ambiguous because of competition among norms. Insofar as norms are important, which norms are followed?

Not all norms are created equal. Indeed, one could think of a continuum of norms in world politics, from those that are clear and uncontested to those that are ambiguous or contested or both. An example of a strong norm is the corollary of the sovereignty norm prescribing that international boundaries of internationally recognized states are sacrosanct. The only exceptions are if the state in question has itself engaged in aggressive action or, more recently, abused human rights. This norm is explicitly accepted by all states that join the United Nations. When Iraq under Saddam Hussein violated this norm by invading Kuwait in 1990 it encountered almost

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<sup>55</sup> Slaughter 2004.

<sup>56</sup> Kleine unpublished.

<sup>57</sup> Haas 1992.

universal condemnation, leading to UN-authorized military action to liberate Kuwait. There was little ambiguity in this norm and no available competing norm to which Saddam could successfully appeal. Even more powerful states encountered costs when they violated this norm, as the Soviet Union experienced in its invasions of Hungary (1956), Czechoslovakia (1968), and Afghanistan (1979), and the United States in its invasion of Iraq in 2003. But protecting human rights is a competing norm that may reduce or cancel these costs.

Consider also the nuclear weapons “taboo.” Thomas Schelling, for instance, has proposed that the failure of any state to use nuclear weapons since 1945, despite arguable military incentives to do so, is accounted for by a “taboo” against first use of these weapons. The strong form of this argument is that the social norm against use of these weapons is powerful enough that nuclear states do not even consider their first use. The weak form is that since there is widespread support for the taboo, they *calculate* that such use would be self-defeating politically.<sup>58</sup> Schelling points out that the United States had clearly acquired, by the 1960s, a strong inhibition against the first use of nuclear weapons, and that the Soviet Union did not use them in Afghanistan, despite losing the war.

So much seems clear. But Schelling also claims that the taboo is a “nearly universal attitude.” Nina Tannenwald, who has devoted a book to documenting the *US* nuclear taboo is more cautious, admitting that it is not clear that the taboo would restrain India, Pakistan, China, or various non-state actors.<sup>59</sup> Indeed, it would be difficult to understand the acquisition of nuclear weapons by such late-comers as India, Pakistan or North Korea, or attempts to do so by states such as Iran, if the taboo were strong and universally believed to be so.<sup>60</sup> As Etel Solingen points out, there is no convincing evidence that any nuclear taboo has affected decisions to acquire nuclear weapons. Indeed, the lack of serious signs of disapproval, much less sustained sanctions, in respect to Indian and Pakistan nuclear tests in 1998, suggests that norms against acquiring such weapons are very weak.<sup>61</sup> In light of this experience, it is hard to be confident that

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<sup>58</sup> Schelling 2006. McGeorge Bundy (1988: p. 588) refers to a “tradition of non-use.” “No government that has nuclear weapons is now unaware of the enormous political cost of using them for any but the gravest and most obviously defensive reasons.”

<sup>59</sup> Tannenwald 2007.

<sup>60</sup> One might imagine the motivation of defense against attack from another country. But if the taboo were universal and binding, one would not fear nuclear attack and would not contemplate using nuclear weapons against a conventional attack.

<sup>61</sup> Solingen 2007: 34.

India or Pakistan would be restrained by a nuclear taboo, and even more difficult to believe that Iran and North Korea would be so restrained.

In any event, there is a logical gap between the argument that nuclear weapons have not been used in the past partly because leaders of the nuclear states internalized the nuclear taboo, and that claim that leaders of states who have acquired, or will acquire, these weapons share these views. The fact that both North Korea and elements of the Pakistani elite sold nuclear technology to Libya, about whose intentions and capabilities neither seller had much knowledge and over which neither seller had political control, provide further indications that the supposed nuclear taboo is not universal. The nuclear taboo seems to be a *non-universal* social norm, held only by some sectors of the elites and populations of some countries. Arguments that it has become generally internalized lack convincing evidence in their support.

In general, values are so diverse in today's world that it seems wise to be skeptical about the emergence of universal internalized norms that actually govern international behavior. What meaningful norms do the Taliban, the Chinese leadership, left-leaning western non-governmental organizations, European Union elites, and the United States political establishment agree on? Acculturation with decoupling – that is, the nominal acceptance of norms accompanied by action inconsistent with those same norms – is, on the other hand, widespread. The desire for self-protection may lead even those who would prefer to follow them, to violate them instead – as Realists have traditionally emphasized.

The impact of norms is likely to vary not only with the power of the states involved, and the interests at stake, but with the clarity of the norm and its superiority to competing norms, which Thomas Franck refers to as “determinacy” and “validation by adherence to a rule hierarchy.”<sup>62</sup> When a norm is universal, or when it is supported by powerful states that share a common set of values, the sanctions associated with its violation may be severe. For example, the NATO intervention of 1998 in Kosovo against ethnic cleansing, in which human rights norms trumped respect for sovereignty, punished the Milosevic regime in Kosovo and led to its demise. But when there are more closely balanced competing norms, or the balance of power

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<sup>62</sup> Franck 1990: 84, 193.



between protagonists is more equal, the impact of any particular set of norms is likely to be diluted.

#### **IV. Norms without Agency: Customary international law**

Under some circumstances, norms can shape interests. The most salient instances are those in which transnational activists, organized around compelling norms, press for the incorporation of these norms in state policy. In these situations – when interests are endogenous to norms – norms clearly play an important role in shaping behavior, particularly as a tool for activists. But when interests are determined exogenously, norms usually take a back seat. As Krasner argues, in practice under these circumstances normative behavior is mixed with self-interested behavior and there is a strong tendency – as his accounts of violations and restructurings of the norm of sovereignty indicate – for interests to dominate.

A major analytical problem for someone interested in the “effect of norms” is that norms are in most cases mixed thoroughly either with state interests or with political pressure from activist movements, or both. If we observe behavior that conforms to the norm, its explanation could lie in interests or activist pressure rather than from the impact of the norm itself. To examine as clearly as possible the impact of social norms as such in international relations, we should look for situations in which norms exist, but they are neither backed by interests nor activist groups. That is, we should assess the impact of *residual norms*, well-accepted as norms but not supported by active current agents, whether states or activist groups.

Customary international law (CIL) provides a good testing ground for examining this issue, since at any given time, customary international law consists of residual norms from an earlier period that are still regarded as valid at least to some extent.<sup>63</sup> If social norms are important independent of agency, customary international law is a good candidate for significance.

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<sup>63</sup> There is much controversy and confusion in the legal literature about customary international law. Byers (1999: 157) regards it as an institution, but Bodansky (2009: 128) quotes, with approval, a former president of the International Court of Justice as declaring that “most of what we perversely persist in calling customary international law is not only *not* customary international law; it does not even faintly resemble a customary law.”

CIL is conventionally regarded as consistent state practice viewed by states as carrying legal obligation. Section 102 of the American Law Institute's *Restatement (Third) of Foreign Relations Law* declares: "Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation" (*opinio juris*). As H.L.A. Hart says, "Some rules of law originate in custom and do not owe their legal status to any conscious law-creating act." Michael Byers argues that the international legal system "fulfills the essentially social function of transforming applications of power into legal obligation." CIL provides the basis for general principles of law and, arguably, for norms such as *jus cogens*, peremptory norms that designate acts such as piracy illegal.<sup>64</sup> The fundamental norm at the heart of CIL is the collective expectation among states that it is appropriate for states to act consistently with CIL – insofar as its content can be ascertained -- and that failure to do so can appropriately be sanctioned by other states. Yet what counts as CIL is a subject for controversy and interpretation, since there is no consensus even among scholars, much less among states, about the criteria to be used in determining its content.

From the perspective of Realist international relations theory, the sense of legal obligation posited by CIL is anomalous. Why should states, lacking any common government, regard rules to which they have not explicitly agreed as generating legal obligations? Indeed, Goldsmith and Posner argue that it is difficult to identify the state practices that qualify as customary international law, and that even if one can do so objectively, "there is no convincing explanation of the process by which a voluntary behavioral regularity transforms itself into a binding legal obligation."<sup>65</sup> Andrew Guzman, on the other hand, seeks to show that when norms are seen as legal norms carrying a sense of obligation, other states' expectations of compliance or reputational sanctions. So, for example, treaties are more credible because of the CIL rule, *pacta sunt servanda*, that treaties are to be respected.<sup>66</sup> CIL performs a credibility-increasing function and is therefore valued by states; since states value it, violations of CIL increase likely sanctions against the violators. The "sense of legal obligation" involves the recognition that failing to respect one obligation may call into question other CIL obligations, some of which are valuable to the state.

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<sup>64</sup> Hart 1961: 48; Byers 1999: p. 6 and ch. 10.

<sup>65</sup> Goldsmith and Posner 2005: 24; see also Byers 1999: chapter 8.

<sup>66</sup> Guzman 2008: 204-05.

Joel Trachtman tries to avoid the issue of *opinio juris*, the “sense of legal obligation,” arguing essentially that CIL provides an equilibrium selection mechanism – a focal point – in an iterated Prisoners’ Dilemma game with multiple equilibria.<sup>67</sup> CIL provides a way for states, under conditions of incomplete information, to reach a cooperative outcome, with associated payoffs that are superior to those derived from other strategies. Its rules, furthermore, can be generalized through linkage to issue-areas other than those in which they were first developed. The focal points that are chosen, of course, will reflect past patterns of interests and power. Goldsmith and Posner opine that “customary international law is best modeled as behavioral regularities that emerge when states pursue their interests on the international stage.”<sup>68</sup> (Goldsmith and Posner 2005: 26).

If one norm gains status as CIL, it is supposed to take precedence over other potentially competing norms. But even the defenders of CIL do not claim very much empirically for it. Guzman is very cautious about how much impact CIL really has, and Trachtman limits himself to showing that CIL could be important within a rationalist framework, not that it actually is. There are two very large theoretical problems, both of which are familiar to readers of Steve Krasner’s work. First, powerful states may choose, rather than relying on CIL as a focal point, to override, distort, or pre-empt customary international law. Second, shifts in interest and power configurations can render a CIL focal point irrelevant, putting it outside of the bargaining range. There is also an empirical problem, which is another form of the problem of observational equivalence that we have encountered earlier in this paper. *Violations* of CIL are difficult to distinguish from *changes* in CIL. Indeed, the same actions often constitute violations of CIL and changes in CIL.<sup>69</sup>

So although customary international law, in principle, is firmly ensconced as part of international law, its content is contested because there is no consensus on criteria to assess the procedures that bring it about, and no definitive dispute settlement process to adjudicate these issues. Whatever is accepted as CIL, furthermore, is thoroughly mixed with past power relationships. And violations of CIL seem frequent; indeed, they are difficult to distinguish from

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<sup>67</sup> Trachtman 2008: 116-18.

<sup>68</sup> Goldsmith and Posner 2005: 206.

<sup>69</sup> For a subtle discussion of violations of, or changes in, the customary international law of humanitarian intervention, see Stromseth 2003.

changes in CIL. The result of this combination of problems is that it is difficult to identify strong impacts on state behavior of customary international law.

Changes in the norm of sovereignty, which has been part of CIL since the 17<sup>th</sup> century, illustrate this point. The sovereignty norm holds that states can determine for themselves the policies they follow within their own territories: they are legally supreme and independent of all other authorities. But under pressure from elites and publics in powerful democratic states committed to humanitarian intervention and democratization, and transnational humanitarian and democratization movements led by non-governmental organizations such as Doctors without Borders and Amnesty International, the sovereignty norm has undergone radical change in the last 20 years. An international commission on Kosovo, led by the respected jurist Richard Goldstone, determined that the NATO military intervention of 1999 was “illegal but legitimate.”<sup>70</sup> Another independent international commission devised a doctrine – nominally accepted by the UNGA although not thoroughly implemented – of a “Responsibility to Protect.”<sup>71</sup> Leaders of states, and former leaders, are no longer immune to prosecution for alleged crimes conducted under their authority. Sovereignty in the classic sense can now be overridden by concerns about human rights.

Whatever their advocates say, claims that respect for human rights is a requirement of statehood are radical attempts to *change* prevailing conceptions of sovereignty. Until these claims succeed in changing general practice, however, actions based on them are *violations* of the norm of sovereignty. Once again, we see that change in a norm and violation of it are often indistinguishable.

Ultimately, the status of these claims will be adjudicated by power as much as by persuasion. For the new conceptions of the conditionality of sovereignty on human rights and democracy to become customary international law, powerful states must adopt them and induce reluctant less-powerful states to adhere to the new norms, at least nominally. For such customary international law on such a contested issue to become firmly grounded, it must be based in normative views held in the domestic societies of major countries.

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<sup>70</sup> Independent International Commission on Kosovo 2000.

<sup>71</sup> International Commission on Intervention and State Sovereignty 2001.

I agree with Trachtman that customary international law can serve as a focal point; and if it therefore leads to an equilibrium that is much different from what would otherwise have obtained, we can judge that it is important.<sup>72</sup> But this mechanism is very different from one through which customary international law affected constitutive domestic norms. For the latter to be the case, one would have to be able to answer question such as the following affirmatively. Do long-established practices of diplomatic immunity create a widespread belief that it is *appropriate* to let foreign diplomats evade parking regulations in New York City, rather than that it is merely *prudent* to do because of the consequences of arresting them as scofflaws? Have customary norms against piracy contributed to resistance to profitable piracy by elites and publics in Somalia? Has the fact that nonintervention is part of customary international law strengthened support for it against proponents of humanitarian intervention?

None of these questions seems to have a clear affirmative answer. Customary international law is not sufficiently salient to domestic publics to exert major impacts on constitutive domestic social norms, nor does it appear to exert major impacts on issues that are highly contested.<sup>73</sup> Pending careful theoretical and empirical work on this point, I conjecture that although customary international law sometimes serves as a focal point, especially in games of coordination, it is not a strong constraint on state action when issues are seriously contested. If the focal point remains Pareto-superior to other options, it persists. But if values, interests or other social norms change, if power shifts toward states with other values than those that formerly dominated world politics, or if well-organized advocacy groups challenge CIL norms on the basis of norms that are more appealing to attentive publics, CIL seems unlikely to be strong enough to maintain the focal point.<sup>74</sup>

This discussion of CIL and nonintervention reveals the importance of agency in the formation and maintenance of international and transnational regulatory norms. The sovereignty

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<sup>72</sup> For this point, I am indebted to a discussion with Rob Trager of UCLA.

<sup>73</sup> Simmons is very skeptical that CIL has much impact on human rights policies and practices. “Customary international law is too thin in the human rights area to provide much protection for the array of rights discussed in this book” (Simmons 2009: 316).

<sup>74</sup> As a thought-experiment, consider how much impact even an established norm that sovereignty were dependent on respect for human rights and democracy would have if China, with institutions and practices the same as those prevalent in 2009, became the most important world power.

norm has recently been relaxed not merely because support for a “responsibility to protect” resonates with changing values in democracies, but because these views have been espoused both by transnational advocacy networks and powerful states. Great powers often have interests in supporting this move because they find it relatively easy to intervene within weaker states and do not face the danger of intervention by others within their own territories. They sometimes face pressure from organized advocacy groups and their own publics to intervene, and they may also have other interests in doing so. In Kosovo, for example, an important US interest was keeping NATO together and demonstrating the essential role of the United States for European states. On the other hand, states threatened by intervention staunchly support the norm. So the norm of human rights, advocated by human rights groups and sometimes supported by powerful states, competes with the norm of sovereignty, which continues to be supported by states that fear interference in their internal affairs. The resources at the disposal of advocates, and their framing of these issues, seem as important as the intrinsic appeal or traditional status of the competing norms.

## **Conclusions and Implications for Research**

Theorists who emphasize the importance of norms in international relations have shown that social norms are deeply embedded in contemporary world politics. In the early 19<sup>th</sup> century, the movement against the slave trade helped shaped British policies toward piracy. In our own era, state officials and other participants in world politics refer frequently to regulatory norms to explain and justify their actions. On some global issues – such as human rights, whaling, humanitarian intervention, and the use of nuclear weapons – regulatory norms have exerted significant effects, and in some highly socialized or professionalized contexts, such as the activities of scientific epistemic communities, constitutive norms play an important role. Although some of these norms may simply act as focal points on issues that do not involve moral principle, others reflect moral principles that are intensely held, and shared by many people. Human rights norms, for instance, are based on principle and have provided resources for groups within societies to use in mobilizing opinion and bringing about changes in state behavior. International organizations promote norms in a variety of areas, sometimes with considerable success. These findings refute a categorical null hypothesis that social norms are insignificant in international relations.

Yet unless the political process is carefully studied, norm-governed behavior and interest-governed behavior may be observationally equivalent. It remains difficult systematically and on a large scale to distinguish truly normative behavior from mimicry, and the extent of decoupling suggests that mimicry is often at work. More work should also be done to distinguish the impact of international norms from the impact of transnational advocacy of norms.

When norms seem to have been important, one often finds a sustained transnational campaign led by activists not closely connected to any government and willing to criticize their own governments. So when norms appear to have an impact, it remains ambiguous to what extent we should credit the norm with the impact, and to what extent the agent. As the example of customary international law indicates, norms on their own do not seem to have much effect on policy. Like ideas, norms are not important in opposition to interests but through their effects on interests. The greatest impacts of the norm-advocacy combination occur in countries that are at least partially democratic, with considerable freedom of communication among citizens with respect to government policy. Their effects are reinforced when elites who had, when out of office, espoused the norms in question move into positions of governance. When leaders of powerful states begin supporting norm-laden policies, whether with pure motivations or not, the policies of weaker, dependent states with non-conforming policies can be affected in turn. In all of these cases, the impact of norms is enhanced when agents use them to shape state interests. The key point is that norms should be seen as generative of, and complementary to, interests pursued by agents rather than as opposed to them.

In world politics, social norms seem to have the most impact when they are promoted by agents. The intrinsic impact of norms is reduced by the large variety of norms, the contradictions between them, and the unavailability of a means of ordering them hierarchically. Far from world politics being a normless world, it is a world of many norms, many of which conflict. Norms designed to constrain states need advocates, without whom the norms will be easily manipulated by states, which can go “norm shopping” for supportive norms to which they can appeal while they pursue their interests.

Examining the role of customary international law reinforces the conclusion that agency is critical to the role of social norms in world politics. Indeed, evidence from customary

international law suggests that it serves more as a focal point than as a strong constraint on action.

What are the implications of my argument for research on norms in world politics? The first point is to be aware of the problem of observational equivalence and how it is *inherent* in situations where policy audiences whose members believe in a set of social norms are important to decision-makers. In these situations, decision-makers who are purely cynical will seek to mimic those who are normatively committed. Inconsistency may betray the cynical officials and enable observers to unmask them; but if they can maintain consistency, it may be impossible to know how much whether they are driven directly by normative commitment. However – and this is the second point – normative advocacy may be equally important whether officials are cynical or sincere. To mimic normative commitment, policy-makers have to behave as if they were committed, so the results of the actions of cynical officials may be very similar to those of committed ones. Hence norm advocates can succeed as well by persuading crucial audiences to which officials are accountable, as by persuading the officials themselves. Third, analysts should avoid viewing norms in disembodied fashion, apart from the agents that promote them. We typically observe agents promoting norms. Norms can be seen as influence resources for agents, who may themselves be influenced by norms. Margaret Keck and Kathryn Sikkink had it right when they focused on “advocacy networks” rather than on norms as such.<sup>75</sup>

Another way of expressing this conclusion is that as social scientists it is probably the wrong question to ask: “Under what conditions do norms matter in world politics?” We cannot separate norms well enough from their advocates to answer this question. On the other hand, we can ask: “Under what conditions does the advocacy of norms by agents matter?” In answering this question, we should pay as much attention to the agents as to the norms, and it may be worthwhile to treat norms analytically chiefly as resources for advocacy agents. We could then in principle compare norms, as resources, with other resources in world politics, such as financial or military resources; and ask about the conditions under which these normative resources are important, and how important they are relative to such material resources.

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<sup>75</sup> Keck and Sikkink 1998.



For norms to constrain state action, they must be internalized in domestic politics, taken up by transnational advocacy groups or international organizations, or promoted by powerful states. If norms are to be causally important, they have to motivate agents and change conceptions of self-interest. These agents, in general, typically act in a self-interested and strategic fashion. However, their strategic actions are shaped not only by their own material interests and beliefs, but by the interests and beliefs of the other agents to which they direct their attention, and by collective expectations of appropriate behavior. In world politics norms depend on agents, and the behavior of agents is structured by norms.

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