ANALYTICAL ESSAY

What Isn't a Norm? Redefining the Conceptual Boundaries of "Norms" in the Human Rights Literature

MICHELLE JURKOVICH
University of Massachusetts Boston

What makes the "norm" a distinct concept? How do norms differ from other aspects of the moral and social fabric of society? In this article I argue that imposing stricter boundaries on the norm concept could have significant analytical payoffs, especially in the human rights literature. Greater conceptual clarity on the boundaries of the norm concept highlights three important distinctions: the difference between norms and moral principles, norms and supererogatory standards, and norms and formal law. Clarifying what a norm is (and, importantly, what it is not) improves our analytic equipment and theories, but the inquiry is not purely a theoretical exercise. Clarifying the norm concept enables us to ask new questions about, and rethink old findings on issues like the role of shaming in human rights advocacy, the origins of norms and challenges to their construction, what constitutes evidence of the existence of a norm, and whether, in fact, all human rights have been translated into norms.

Keywords: norms, human rights, law, international relations, constructivism, discourse, economic and social rights

Introduction

What makes the "norm" a distinct concept? How do norms differ from other aspects of the moral and social fabric of society? In this article I argue that imposing stricter boundaries on the norm concept could have significant analytical payoffs, especially in the human rights literature. Greater conceptual clarity on the boundaries of the norm concept highlights three important distinctions: the difference between norms and moral principles, norms and supererogatory standards, and norms and formal law. Clarifying what a norm is (and, importantly, what it is not) improves our analytic equipment and theories, but the inquiry is not purely a theoretical exercise. Clarifying the norm concept enables us to ask new questions about, and rethink old findings on issues like the role of shaming in human rights advocacy, the origins of norms and challenges to their construction, what constitutes evidence of the existence of a norm, and whether, in fact, all human rights have been translated into norms.

This article begins with an examination of the core component parts of norms, rooted in the most frequently cited definitions of the norm concept in international

relations (IR). I provide a visual diagram to assist in redefining the edge of the norm concept and in distinguishing norms from other concepts. The article then turns to examining the difference between norms and moral principles, supererogatory standards, and formal law, highlighting how conflating these concepts can hinder the analytic work of contemporary scholarship. I argue that while the norm concept has been used in increasingly flexible ways in contemporary scholarship, imposing stricter boundaries about what the concept does (and does not) constitute can yield important analytical payoffs. Following the lead of Sartori (1970), greater conceptual clarity on the "norm" concept can lead to a greater accumulation of knowledge as scholars ensure they are comparing like items under the "norms" label.

What Constitutes a "Norm?"

Scholarly discussion of norms has now permeated all theoretical approaches in IR. Rationalists and realists speak of norms even if they argue they matter less in influencing behavior than constructivists might expect.[1] Perhaps because of the regularity with which norms are discussed in IR, scholars now rarely define what they mean by the concept, which may contribute to the blurred boundaries of the concept in contemporary scholarship.

Earlier scholarship was much more careful in setting the parameters of the norm concept. Jepperson, Wendt, and Katzenstein (1996, 54) define norms as "collective expectations about proper behavior for a given identity."[2] Finnemore and Sikkink (1998, 891) define a norm in similar terms as: "a standard of appropriate behavior for actors with a given identity."[3] While some scholars have focused on disaggregating norms into various types (i.e., legal, social, prescriptive, regulatory, and descriptive, among others [Gibbs 1965; Elster 1989; Brauer and Chaurand 2010; Kratochwil 1989]) for the most part constructivist scholarship in the field of IR speaks of a "norm" as a single concept, without qualifiers. When scholars do provide a definition for norms in their work, they tend to rely on either the Jepperson, Wendt, and Katzenstein (1996) or Finnemore and Sikkink (1998) definitions, as do I in setting the contours of the "norm" concept in this article.[4] Of course, scholars are free to define a norm differently than I do here, but doing so would require them to similarly articulate the analytic costs and benefits to an alternative definition. As I will argue in this article, these early definitions of a norm are not only conceptually appropriate, but they are also analytically *useful* to the field. Moreover, the increased flexibility in how the term "norm" is used in contemporary scholarship may result in diminished analytic pay off.

As these early norm definitions above highlight, norms have three essential component parts: (1) a moral sense of "oughtness" (as signaled by the words "proper" and "appropriate" above); (2) a defined actor "of a given identity"; and (3) a specific behavior or action expected of that given actor. A norm must also meet the condition that these three component parts are *collectively shared* within a particular society (distinguishing a norm from an individual's private belief) and that these component parts are sufficiently specific such that it is possible for a violator to be

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[1] See, for example, Abbott and Snidal (1998); Morrow (2007); Schweller and Pu (2011); Simmons (2009); Walt (2009).

[2] This serves as the definition of a norm throughout Katzenstein (1996).

[3] Within the field of sociology, we see a similar categorization of the norm as including a sense of "oughtness" combined with an actor and an expected action or behavior. See, for instance, Talcott Parsons (1937, 75): "A norm is a verbal description of the concrete course of action thus regarded as desirable, combined with an injunction to make certain future actions conform to this course. An instance of a norm is the statement: 'Soldiers should obey the orders of their commanding officers.'"

[4] See, for example, Bailey (2008); Blyth (2003); Checkel (1997); Keck and Sikkink (1998); Murdie and Davis (2012); Payne (2001). Citation counts are, of course, imperfect metrics for assessing the influence of articles, but for reference, at the time of this writing, the Finnemore and Sikkink (1998) article has been cited over seventy-nine hundred times.
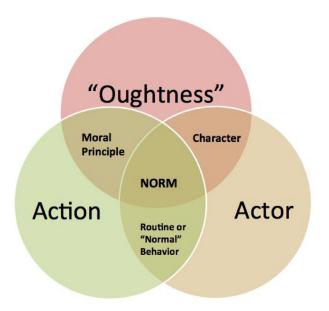
Figure 1. The norm concept.

identified. Importantly, if any of these component parts is missing (actor, action, "oughtness"), I argue scholars are not observing a *norm* but a different aspect of the social fabric entirely. The Venn diagram is a useful format in visualizing the edges of the norm concept, once the core component parts of norms are identified. In the interest of clarity, I have constructed one above (Figure 1).

Often, it is the sense of *oughtness* embedded in a norm that gets the most attention in constructivist theory. This may be a product of scholarly history. When the field of IR resurrected its interest in sociological approaches, which brought with it renewed interest in the power of norms, scholars were deeply invested in debating distinctions between the logic of consequence and the logic of appropriateness (i.e., *oughtness*) (March and Olsen 1998). That individuals (or states) could act in accordance with social rules determining appropriate behavior and not solely on the basis of strategic calculations was itself fodder for extensive conversation (Goertz and Diehl 1992; Katzenstein 1996; Price 1998). The idea that such a thing as social appropriateness mattered in enabling or constraining action was a key takeaway from these debates.

Indeed, norms must have a moral dimension (the sense of "oughtness"). This "oughtness," moreover, is of a particular type. When we refer to the moral sense of "oughtness" in a norm, we understand this to mean that engaging in a particular expected behavior is socially acceptable, and should an individual *not* comply with the norm, doing so would be understood as unacceptable. In other words, these claims of "oughtness" are not understood as *optional*, such that a social community would react in the same way whether individuals complied or did not comply with a given norm. Should one opt not to comply with a norm, we should expect a reaction from the social group to signal disapproval with their deviant behavior.[5]

Not all socially expected behaviors have a moral component. If you had an expected behavior from a particular actor without any sense of oughtness, you would be describing routine or "normal" behavior but not a norm. Take, for instance, the following example: "American adults drink coffee in the morning." Here we have a

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[5] Of course, the word "moral" should not be understood in a religious sense but rather in its philosophical sense, as distinguishing the "appropriate."

clear group of actors (American adults) and an expected behavior (drinking coffee) but no sense of oughtness or appropriateness. Drinking coffee might be customary or routine behavior, but if an American adult did *not* drink coffee in the morning, they would not be socially shamed for that behavior, as there was no moral component to this statement of custom or routine.[6] Drinking coffee in the morning might be normal behavior but not *a norm.*[7]

Norms, however, require more than just a sense of "oughtness." They must also link a specific actor to a specific expected action. It is in linking an actor to an action that the relevant social rule is constructed and that the norm becomes powerful and effective in enabling social pressure. The attribution of a specific expected behavior to a specific actor in the construction of a norm relies on socially shared beliefs about the character of the actor in question (labeled "Character" in figure 1), such that the specific behavior would fit within what was expected from the character of the actor.

I use the term "character" instead of "identity" for the sake of precision. Constructivist scholarship has long been interested in unpacking how identities are constructed (Wendt 1994; Katzenstein 1996), but while the concept of "identity" encompasses moral attributes or virtues assigned to a particular actor (what I define as "character"), it also includes a number of attributes that are not necessarily justified in moral terms. Character is certainly an important part of the identity of the United States of America, for instance, but its identity is also constituted by the structure of its political bureaucracy in ways that rely on technical and legal attributes as much as moral ones. Identity can encompass a wide array of moral, technical, legal, bureaucratic, and strategic variables. For the purpose of norm construction, it is the specific moral virtues that constitute a particular actor that matter for justifying why a particular behavior would be expected of that specific actor in the first place.

IR scholarship does not often conceptualize actors independent of any action or behavior, making examples of what would fill the "Character" block in figure 1 less obvious. Conceptually, this category would be filled by examples such as: "Good democracies are tolerant" or "Good Christians are compassionate."[8] Such statements identify not only an actor (a democracy or a Christian) but a moral virtue that constitutes that actor. It is the character of these actors (that they are tolerant or compassionate) that is used to justify why a particular action would be expected of them in the construction of a norm.

Take, for instance, the following norm: "Good governments ought to regulate elections to ensure they are free and fair." Here we see all three requisite component parts of norms: a sense of oughtness, the government as the defined actor, and the regulation of elections as the expected action by that actor. The action or behavior (regulating elections) is expected of this particular actor (government) because it is seen as consistent with the character of this actor (i.e., we understand the government as constituted by certain virtues such that this behavior is consistent with those virtues).

A society may agree that elections ought to be regulated, or that it is appropriate that elections are regulated, but not link this particular desired outcome to a

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[6]On the importance of "oughtness" in distinguishing norms from "behavioral regularities," see Florini (1996). Gibbs (1965, 589) uses the example of Americans drinking coffee to highlight customary behavior absent a sense of "oughtness," though he does not believe that what he calls "collective evaluations" are a necessary component of all norms.

[7]Some work utilizing practice theory in IR, for example, would seek to understand the power of habit or routine in IR, as opposed to norms, focusing on better theorizing this conceptual space. There remains, however, variation in where practice theorists draw the boundaries of their "habit" or "practice" concepts. See Adler and Pouliot (2011); Hopf (2010); McCourt (2016).

[8]I thank Daniel Levine and the participants of the University of Alabama Department of Political Science forum for the example "Good Christians are compassionate."

particular actor. This by itself would constitute a *moral principle* ("Elections ought to be regulated"). In contrast, the construction of a norm requires more than articulating an expected action and a sense of *oughtness* about it. Norms must specify an *actor* from whom a behavior is expected. In this way, while all norms are moral principles, not all moral principles are norms. Under the broader category of "moral principles," the subcategory of "norms" requires the specification of a particular actor from whom an appropriate behavior is expected.

Distinguishing Moral Principles from Norms

Why does it matter so much that an actor needs to be specified to qualify as a norm? And what could be gained by more clearly distinguishing between moral principles (which lack clearly defined actors) and norms in the human rights literature? Theoretically the actor requirement matters for the integrity of the concept itself. The most oft-cited definitions of a norm in IR scholarship require a shared understanding of an actor, action, and sense of "oughtness" as essential component parts of the norm concept, and conceptual integrity is essential to the construction of new knowledge.[9] Analytically, specifying an actor and linking them with a specific expected appropriate behavior matters because only in so doing can the violation of the norm be observed. Constructivist scholarship centers on the power of norms to enable or constrain behavior through the use of social sanctions against "norm violators," but this would be impossible to do if a specific actor and expected action were not specified. "Norm violators" can be identified when individual actors deviate from the appropriate behavior socially expected from them, but if a given behavior was not expected from any particular actor in the first place, it would not be possible to identify a violator. Conceptually, norms must be able to have identifiable violators. If it would be impossible to identify a violator, one might be dealing with a moral principle but not a norm.

Conflating norms with moral principles is analytically costly, and clearly distinguishing between the concepts would allow scholars to better understand a significant challenge to norm construction—the social process of determining *from whom* an appropriate behavior is expected. This, in turn, may help provide potential answers to existing puzzles in the literature, such as why shaming works sometimes and not others in compelling behavioral change.

Determining *who* is obliged to behave in a particular way is a serious challenge for any effort at norm construction and has been especially problematic for economic and social rights. It is one thing to convince publics that it is wrong that children should go hungry in the modern age, but it is quite another to create a shared social understanding that any particular actor, such as a national government, is obliged to ensure children have access to adequate food. Indeed, one of the greatest challenges to norm construction around economic and social rights in particular has been the struggle of determining *from whom* society expects a particular behavior such that that actor could be held accountable through social sanctions if they deviated from the behavior society expected from them. Understanding this important challenge to norm construction around economic and social rights is lost on our scholarship if we conflate moral principles and norms. Take, for instance, growing conversations about what Hein and Moon (2016, 107) refer to as "The norm of 'universal access to essential medicines,'" which they argue is a "secondary norm" under the "primary human rights norm of the 'right to health.'"[10] Hein and Moon (2016) make a compelling case for the existence of a more limited norm

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[9] On the importance of concepts and conceptual integrity, see Eubank (1932, especially 31–32). See also Sartori (1970).

[10] Hein and Moon (2016, 47, 3) define "primary norms" as "those norms that are founded on general values or ideas shared by a community and upheld through diffuse social pressure. Such norms basically do not change even when they are laid down in binding international legal instruments. Secondary norms are designed to make sure that

of universal access to essential medicines (in particular ARV medications). Here they argue that specific behaviors by specific actors have become socially expected, such that pressure could be applied to enforce the norm. Yet, claims of any global norm around the economic and social right to health more generally should give pause. *Who* is obliged to supply medical care if there is a norm of universal access to adequate healthcare? There may be a moral principle that is shared globally that humans *ought to have access to adequate health care*, but referring to this moral principle as an already established norm pushes to the background the important and challenging work needed to determine *who* was actually responsible for engaging in particular behavior consistent with this principle. This would be an essential part of building this moral principle into a norm.[11]

One important characteristic (and benefit) of a norm as opposed to a moral principle is that norms can have identifiable "violators," and the existence of a norm violator may enable more effective shaming by social groups. The moral principle that "Nobody should have to live on the streets" may be shared across all members of a society, but the result of this principle may be no more than a shared sense of sadness or tragedy at the high rates of homelessness in a given community. Individuals may choose to respond to this moral principle by donating to charities (or not) or opening up their homes (or not), but absent a norm linking an expected behavior to a specific actor such that the persistence of homelessness could be linked to a "norm violator," constructivist theory gives little reason to believe the social tactics and strategies available to influence changes in behavior (like shaming) would be effective.

Absent a socially shared expectation that a particular actor ought to behave in a particular way it would be very challenging to compel behavioral change from the actor in question. Understanding this might help our scholarship make sense of why, for instance, some movements, especially those advocating for more general or ambiguous principles have struggled to result in change. Take for instance the contemporary movement toward "sustainable development." There may be a globally shared moral principle that sustainable development is good, and there certainly are international agreements in place to promote "sustainable development," but this is not the same thing as a norm existing that specifies an expected behavior from a specific actor. *Who* should do *what* to assist with sustainable development? A number of scholars have pointed to the existence of a "sustainable development norm" but with varied definitions of what a norm constitutes. Ingebritsen (2002), for instance, argues that a "sustainable development norm has taken hold"[12] but defines a norm more loosely as a "code of appropriate behavior,"[13] not requiring this behavior to be tied to any "actor of a given identity," as required in earlier definitions of the norm concept.[14]

Hadden and Seybert (2016), for instance, ask why the "sustainable development norm" does not behave as norms are expected to behave (especially as expected in Finnemore and Sikkink's (1998) "norm life cycle") and is unable to elicit the change in behavior among states that constructivists might expect. Returning to

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primary norms are in fact observed." They also distinguish between "formal norms" as those "accepted by a formal legitimized body" which may include laws and "informal norms" as those "based on shared norms and beliefs and not on formal institutional decisions." For a discussion of "primary rules" versus "secondary rules," see Hart (2012).

[11] Indeed, in the United States we are watching this battle play out in real time as activists work to construct a shared social understanding that a particular actor (the national government) is obliged to ensure access to adequate health care. For many developing countries, however, where a norm of access to ARV medicines may exist, it remains an open (empirical) question whether there is a norm that any particular actor (The national government? Outside states? NGOs? Private foundations?) is obliged to ensure access to adequate health care more generally. As will be discussed later in the article, codifying a "right to health" in international law (such as in the ICESCR) does not automatically generate any corresponding norm to that right, even among the society of states that ratified the law.

[12] Ingebritsen (2002, 15).

[13] Ingebritsen (2002, 11).

[14] Definition of a norm taken from Finnemore and Sikkink (1998); Katzenstein (1996).

our earlier discussion of the necessary component parts of norms would suggest that the "sustainable development norm" is not a norm at all but a moral principle. To be a norm, that moral principle would need to be accompanied by specified actors from whom specific behavior is expected.[15] It is a failure of those actors to follow prescribed behaviors that creates norm violations, and violations are what give activists leverage to compel behavioral change. Norms allow focused shaming on a violator. Moral principles have no such benefit. In this way, it is no longer puzzling that "sustainable development" does not behave as norms are expected to behave. It is not a norm.

Many human rights may lack norms but have no shortage of moral principles, especially when dealing with economic and social rights. There are certainly shared moral principles that people ought to be fed or clothed or that it is morally right that everyone should have a home or access to health care. And yet in each of these instances, while the human rights to food, clothing, housing, and health care are codified in international law, that does not mean that there is a *norm* shared in society linking any particular actor to any expected action to fulfill this right. There may be a shared moral principle in US society that it is good or right for Americans to have adequate food and housing (but no expectation that any particular actor is obliged to fulfill this right), but conceptually this is not the same as a *norm* existing around this right.

Distinguishing Norms from Supererogatory Standards

Not only would drawing a clearer distinction between moral principles and norms be useful to contemporary scholarship, but so too would more clearly distinguishing supererogatory standards from norms. Understanding the difference between norms and supererogatory standards requires a deeper analysis of what constitutes a sense of "oughtness" in a norm. Not all claims of good or moral behavior are alike. Of critical importance to the norm concept is that the embedded "oughtness" claim is understood as *not optional* but, rather, obligatory. When we say there is a norm among states that "Good states ought not plunder other countries" (Sandholtz 2007), compliance with the norm, among the society of states, is understood as obligatory. Should a state *not* comply with the norm, we should expect a social response to the norm's *violation*, as such behavior would be seen as an act of deviance. We understand compliance with the norm as marking "good" or "appropriate" behavior and noncompliance as "bad" or "inappropriate." We would expect, in other words, a different reaction from the social group to noncompliance with the norm than we would from compliance with the norm.

But what about nonobligatory actions that are understood by a social community as morally good if they are done but *not* morally bad or inappropriate if they are not done? Referred to as "supererogatory" by philosophers such as J. O. Urmson (1958), John Rawls (1971, 117), and Susan Wolf (1982), supererogatory acts are understood as morally praiseworthy if done but *are not required*. If an individual performed a supererogatory act, it would be seen as morally good, but if they did not, they would not be shamed for noncompliance. Supererogatory standards of behavior, in contrast to norms, are nonobligatory.

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[15] Hadden and Seybert (2016) convincingly document ambiguity in how "sustainable development" is understood by states but do not see this ambiguity as evidence of a lack of a norm but rather as part of a "norm definition" process. Conceptually, I would argue that this is problematic. Until a social community shares common expectations of appropriate behavior for actors of a given identity, a norm does not exist. Many (perhaps even most) efforts to create norms never succeed. If we allow of the concept of a norm to be stretched to label as a "norm" that which has not yet succeeded in becoming a socially shared expectation of appropriate behavior by actors of a given identity, we will run into the problem predicted by Sartori (1970): we will be unable to aggregate findings in a meaningful way to generate stronger theory, as we will have broadened our concepts so far as to run the risk of false equivalence.

A frequently cited example of a supererogatory act is articulated by Urmson (1958). Contrasting understandings of duty with the supererogatory, he considers the following:

> We may imagine a squad of soldiers to be practicing the throwing of live hand grenades; a grenade slips from the hand of one of them and rolls on the ground near the squad; one of them sacrifices his life by throwing himself on the grenade and protecting his comrades with his own body…But if the soldier had not thrown himself on the grenade would he have failed in his duty?…If he had not done so, could anyone have said to him, "You ought to have thrown yourself on that grenade?"…The answer to all these questions is plainly negative. We clearly have here a case of moral action, a heroic action, which cannot be subsumed under the classification [duty] whose inadequacy we are exposing. (Urmson 1958, 202–3)

The supererogatory constitutes a category of behavior that extends all the way to the heroic or saintly (Urmson 1958; Wolf 1982) but also includes anything that is one step above what is understood as one's "duty." As Urmson (1958, 205, emphasis added) notes, "It is possible to go *just beyond* one's duty by being a little more generous, forbearing, helpful, or forgiving than fair dealing demands, or to go a very long way beyond the basic code of duties with the saint or the hero." The concept of "duty," understood by philosophers as conceptually distinct from the supererogatory, functions similarly to how constructivists understand a "norm." Both "duty" and "norms" are constituted by shared expectations of appropriate behavior by specific actors.

Consider discussions about a norm of charity or a norm of charitable giving.[16] Is the term "norm" really capturing what is taking place when individuals, for instance, donate to a preferred charity? Consider the following example: A woman visits her friend at her home for coffee. Noticing a child sponsorship card on her fridge (a picture provided by an NGO of a child in Rwanda she supports through her monthly charitable giving), the friend remarks how kind it is of her to donate to support this child. "It just seemed like a good thing to do," her friend replies.

Certainly, the act of donating to an NGO to support a child in Rwanda was seen by this friend as a praiseworthy thing to do. And yet, had this woman *not* donated to charity, we would not expect her to be shamed for not doing so. Donating to charity is a supererogatory act. It is morally good to do but not required. It is not a norm.

As our field increasingly relies on content and discourse analysis as evidence of the existence of norms and other social concepts, the potential for conflation between norms and supererogatory standards is particularly high.[17] Why? If scholars look for praise or verbal justification of behavior as evidence of a norm, both supererogatory acts and norm-driven acts would be coded alike. Both elicit verbal praise when performed. Both may even be justified by phrases like "it was the right thing to do" or "it is good to do X, Y, Z." And yet, these are distinct social concepts; they have different characteristics and they elicit different social responses (see table 1, below).

Much state behavior may be laudable, even by other states, but this praise may not be evidence of any norm compelling state behavior. Consider, for instance, the provision of humanitarian assistance to civilians in war-torn Syria. In April 2017, the UN announced that forty-one donors (mostly states but some NGOs as well) had pledged six billion dollars in funding for humanitarian assistance in Syria (OCHA

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[16] For an interesting discussion of "quasi-moral" and "utility-based norm of charity" see Elster (2011, 332). Some would also argue that in the context of certain communities (such as religious communities) there may be strong beliefs in the importance of charity (Ferris 2011; Lazarev and Sharma 2017). Whether this translates to a norm depends on whether donating to charity is socially required.

[17] For example, see Kütt and Steffek (2015) for the use of content analysis to provide evidence of a norm of the prohibition of nuclear weapons; see Kollman (2008) for content analysis to provide evidence of environmental management system norms; and, for an interesting exchange on whether human rights language in the sustainable development agenda can reflect norms, see Williams and Blaiklock (2016) and Forman, Ooms, and Brolan (2015).

Table 1. A norm versus a superogatory standard

	Moral type	Expected response to noncompliance
Norm	Morally good or appropriate to follow and morally bad or inappropriate to not (i.e., socially required)	Social shaming or other social costs (reputational, etc.)
Superogatory standard	Morally good or appropriate to follow but *not* morally bad or inappropriate to not (i.e., socially nonobligatory)	Nonresponse. No social costs or shaming.

2017). This was certainly a praiseworthy response to the crisis, though in spite of the media coverage of these donations and state justifications of donations as the responsible or appropriate thing to do, would such praise or verbal justification constitute evidence that there was a norm that determined appropriate levels of financial support by outside states in the event of humanitarian crises? I would argue that it would not. Donating in times of humanitarian crisis may constitute superogatory acts by states. In this sense, while laudable, they would not elicit the same type of social response to noncompliance as would the violation of a norm that "Good states ought to provide sufficient assistance to other countries in times of humanitarian crises." Should a state not actually make good on fulfilling their pledge (as frequently occurs), would we expect social costs from among the society of states?

Distinguishing between superogatory acts on the one hand and norm-driven acts on the other requires that scholars look for social responses to noncompliance or violation (i.e., shaming or social sanctions). Superogatory acts do not elicit shaming or social costs if the act is not performed, as they are nonobligatory. Norm noncompliance *does* elicit social sanctions or social costs. Far from simply a minor characteristic of norms, the threat of social sanctions for noncompliance is what gives norms their power to enable and constrain behavior. This is a key attribute of norms, as articulated in constructivist theory, but one that requires a very particular type of an "oughtness" claim, which is absent when dealing with superogatory standards. Response to violation, then, provides both necessary and sufficient evidence of a norm. Verbal justification is neither necessary nor sufficient to provide evidence of a norm (though verbal *shaming* in response to violation would), as such evidence may be signaling a superogatory standard instead.

The reason for highlighting this conceptual distinction between norms and superogatory standards is not purely theoretical. Unpacking the "oughtness" component of norms enables us to better understand potential challenges social scientists face when determining what would constitute evidence of a norm, such that they can ensure that they can distinguish between superogatory standards and norms when examining complex social interactions. In the realm of human rights, this distinction matters a great deal, especially for economic and social rights. If we want to understand the extent to which any norm exists around the right to housing, the right to food, or even the right to healthcare, as social scientists we need to be clear about the difference between superogatory standards and norms in order to make sense of social beliefs surrounding these important rights. As discussed in the previous section, there are important differences between the moral principle that "Nobody ought to be homeless" and a norm that "Good governments ought to ensure everyone has adequate housing." Similarly, there are important distinctions between superogatory standards and norms surrounding the provision of housing or improvement in living standards. It may be laudable (by other states or even by a state's own citizens) when governments do make efforts to ensure better living conditions for their citizens, but it may well be that this praise signals a socially shared belief that states helping to improve living standards is morally good but nonobligatory (i.e., superogatory).

Moral principles (which lack a defined actor) and supererogatory standards (where there is no sense of obligatory "oughtness") may well be converted into norms over time. And yet, in order to begin understanding how this happens, we must first be clear about the important differences between these concepts. Clarifying the conceptual boundaries here enables scholars to ask new questions like: How are activists able to convert supererogatory standards to norms, such that they can more effectively leverage social tools like shaming to compel behavioral change?

Distinguishing Formal Law from Norms

In addition to more rigorously distinguishing between norms and moral principles, and between norms and supererogatory standards, the human rights literature would benefit from drawing clearer distinctions between norms and formal law.

IR scholars have long been interested in conceptualizing law and legalization of rules (Abbott et al. 2000; Finnemore and Toope 2001), though less attention has been paid to parsing the difference between norms and formal law (rules codified in law). Weber (1968, 33–35) grapples with this distinction as he argues with legal philosopher Rudolf Stammler (1896) over where to set the conceptual boundary between orders understood as "convention" verses "law." Weber's (1968, 34) "convention" matches what constructivists refer to as "norms," noting: "An order will be called (a) *convention* so far as its validity is externally guaranteed by the probability that deviation from it within a given social group will result in a relatively general and practically significant reaction of disapproval." Stammler, according to Weber, posits that the distinction between convention and law is found in whether or not an individual followed the relevant rule voluntarily or did so because their obedience was compelled through some enforcement mechanism (as would be the case in law, he argues, but not convention). Taking issue with this distinction, Weber (1968, 34) notes that obedience is just as coerced in social conventions as it is in law. The distinction between law and convention, to Weber, is whether or not one is compelled to obedience by a "staff of people" employed specifically for the purpose of monitoring compliance—a rather technical and bureaucratic distinction.

Indeed, there is often an assumption in IR scholarship that a given law should be preceded by a norm if the law is to be effective (Brunnée and Toope 2010, 55–87). But whether law is preceded by norms, or serves to generate those norms after laws are codified, scholars agree law and norms have a close conceptual relationship.[18] Perhaps because of the assumption that law and norms must walk hand-in-hand, scholars have begun to use the terms "human rights law" and "human rights norms"[19] interchangeably, or assume that if a human right is codified in law there must also be a corresponding norm around that right.

The challenge with discussing norms, of course, is identifying *among whom* a norm is expected to exist. Especially common among conversations of human rights covenants and treaties, if scholars interchange the phrase "human rights law" and "human rights norms," they are at minimum assuming that human rights, codified in law, have translated into norms at some level. But *among whom* are these norms

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[18] For a helpful review article on the recursivity of law, see Halliday (2009). See also Biersteker et al. (2007); Reus-Smit (2004).

[19] The phrase "human rights norms" has become ubiquitous in the human rights literature, but it is generally left undefined, making it difficult to determine precisely what is meant by its usage (e.g., the phrase is used without definition in Fariss [2014], Greenhill [2010], and Lupu [2015], though in the case of Risse and Sikkink [1999, 1] and Keck and Sikkink [1998, 80] "human rights norms" seems to refer to rights codified in human rights law or included in the Universal Declaration of Human Rights. When "human rights norms" is used by Moravcsik [2000, 228, 238] it appears to reference human rights included in the European Convention for the Protection of Human Rights and Fundamental Freedoms [ECHR]). The use of the blanket phrase "human rights norms" is problematic as it suggests *all* human rights have norms and obscures the uneven progress of norm construction across human rights, especially in the case of economic and social rights.

supposed to exist? States are the actors that ratify international law surrounding human rights, so when "law" and "norms" are used interchangeably is this meant to suggest that there *must* be a norm held by a group of states if they ratified a covenant articulating a legal commitment to specific policies? And yet, much scholarship has challenged the idea that states are always "sincere ratifiers" of international law, arguing instead that some states may ratify international covenants and treaties without ascribing to a normative belief that they are appropriate and without any intention to actually abide by them in the first place (Simmons 2009). According to this logic, even ratifying a human rights treaty should not be seen necessarily as evidence of a norm, but rather as a calculated strategic choice by states (Hathaway 2007).

Even if a group of states have internalized a norm surrounding a human right also codified in law, should we assume that this normative commitment necessarily continues as long as the legal commitment does? Conceptually, if we are willing to use the two terms interchangeably, we must. Yet Foot (2006, 131) skillfully challenges such an assumption in the case of torture, asking: "Why, then, given the rhetorical, moral and legal status of this prohibition, is torture being debated, contemplated and even resurrected as an unsavoury and allegedly necessary course of action in this counter-terrorist era?" Formal law surrounding a prohibition against torture still exists, but Foot (2006) notes, the antitorture *norm* may be eroding.

Legal scholars are much more careful in distinguishing between norms and formal law. H. L. A. Hart (2012) grapples with how to define and conceptualize law, noting that law has the important characteristic of existing even when society may neither know about the law's existence nor independently believe that a particular behavior ought to be expected of a particular actor:

> It may indeed be desirable that laws should as soon as may be after they are made, be brought to the attention of those to whom they apply. The legislator's purpose in making laws would be defeated unless this were generally done, and legal systems often provide, by special rules concerning promulgation, that this shall be done. But laws may be complete as laws before this is done, and even if it is not done at all. (Hart 2012, 22)

Here we have a key conceptual distinction between norms, as defined in IR scholarship, and law. Norms are socially shared expectations of particular behavior by particular actors. They exist only when they are shared widely among members of a given society. It would be impossible, in other words, to have a norm that was only known by one individual, as this would be an individual belief but not a norm. The Hart (2012) quote above is not meant to rehash debates about "secret laws" but rather to highlight the important insight that law by definition requires no shared social consensus. Laws can exist without people knowing about them *or internalizing any belief that a particular expected behavior is morally right or good*. In this way, while law may articulate the three component parts of norms described in figure 1, it does not need to meet the necessary condition of being a socially shared belief, a condition articulated on the second page of this article. Conceptually, this is an important distinction between law and norms.

The conceptual distinction between laws and norms becomes even more apparent when we broaden our lens to consider whether there is a shared norm within the society of a given state consistent with the legal commitments that state made. Take, for instance, the example of laws governing media piracy. There are formal laws prohibiting individuals from illegally streaming movies on the internet here in the United States, and these laws are likely widely known among Americans. The existence of these laws, however, does not guarantee that a norm automatically exists in American society that streaming movies without paying for them on the internet is morally bad, such that if an individual did stream a movie they would be socially shamed for their behavior. As was very apparent in my own college dormitory,

streaming media without paying for it did not violate a social norm (as the behavior generated no social shaming for deviance), even though it violated a law. Law and norms may exist side by side, but they also might not. Consider, also, the United Nations Convention Against Torture. The United States has ratified this convention, which prohibits states from engaging in torture. While Foot's (2006) discussion of the erosion of a norm at the level of the state has already been discussed, there is also evidence to suggest there is no such antitorture norm among the American public, despite the United States' legal commitment to the Convention against Torture. According to a 2016 Reuters poll, for instance, 63 percent of American respondents stated that torture was either "often" or "sometimes" justified, with only 15 percent stating it should never be done (Kahn 2016). Whether a norm exists around a human right already codified in law should be an empirical question, not an assumed given. Law and norms are not only conceptually distinct, but one does not presuppose the other. And when scholars write in terms of norms surrounding legal commitments, they should be clear *among whom* they expect this norm to exist (is the norm expected to exist among states, activists, domestic publics, etc.?).

Returning to the human rights literature, the broader point is that the conflation of laws and norms results in scholars missing the important insight that *not all human rights codified in law have been translated into norms*. Conceptually, law and norms are not the same thing, and the existence of one does not necessarily imply the existence of the other. To take one final example, consider the human right to food. The right to food has been codified in international law in several legally binding covenants and conventions, beginning in 1976 with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), though the right to food was included earlier in the legally nonbinding Universal Declaration of Human Rights (1948) (see table 2, below). Nearly all states have ratified at least one legally binding convention or covenant ascribing responsibility to national governments for ensuring the right to food for their citizens.[20] And yet, hunger remains a persistent problem globally, even in comparatively wealthy countries. As of 2012, the United Kingdom reported at least four million Britons remained food insecure (McGuinness, Brown, and Ward 2016). Among middle and lower income states, the problem is even more pronounced. In India, as of 2015, 38 percent of children under five were stunted, an indicator used to estimate malnutrition rates (UNICEF, WHO, World Bank 2015). Globally, the FAO (2015) estimates 795 million people in the world are hungry. Certainly, the existence of hunger does not constitute evidence that there is no norm around the right to food, but the lack of response to "violation" does. If there were a norm that "Good governments ought to ensure their people have enough food to eat," the persistent failure of states to ensure their people have enough to eat, especially among states with higher levels of wealth, should elicit social costs among the society of states. And yet it does not. The UK is not shamed at UN meetings for the persistent hunger of four million people within its population, for instance. The only exception to the nonexistence of state shaming for persistent hunger would be cases where there was clear evidence that governments had *intentionally* starved people (such as blockading access to food or forcibly removing food from specific populations), but international law does not require such a high degree of barbarism to constitute a failure to ensure the right to food. For the vast majority of the world's hungry, hunger is not caused by active withholding of food but through poor and neglectful government policy. Nonetheless, there is rarely any social cost incurred for "violating" any claim that "Good governments ought to ensure their people have enough food to eat." There is certainly formal law that articulates this obligation, but that does not mean this law has translated into a norm, *even among the society of states*, that indeed, good governments ought to ensure

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[20] General Comment 12 of the ICESCR more clearly articulates the tripartite state obligations "to respect, to protect, and to fulfill" the right to food for their citizens.

Table 2. Select international human rights instruments that recognize a right to food[1]

Acronym	Full name	Adopted	Year entered into force	No. of states that have ratified as of January 2017	Legally binding?
UNHR	Universal Declaration of Human Rights	1948 (UN General Assembly)	N/A	N/A	No
ICESCR	International Covenant on Economic, Social, and Cultural Rights	1966 (UN General Assembly)	1976	165	Yes
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women	1979 (UN General Assembly)	1981	189	Yes
CRC	Convention on the Rights of the Child	1989 (UN General Assembly)	1990	196	Yes
N/A	Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security	2004 (FAO)	N/A	N/A	No

[1]Modified from the helpful chart in Eide and Kracht (2007, xxxix). While CEDAW and the CRC do not explicitly state a right to food for all, they recognize state obligation to ensuring adequate food and nutrition to target populations (pregnant and lactating women in CEDAW and children in the CRC).

all their people have enough to eat to avoid the pangs of hunger. Certainly, one could claim that international law around the human right to food is largely unenforced and comparatively weak, but much international law around human rights in particular struggles with enforceability. My modest aim here is to call attention to the conceptual difference between a human right codified in law and any norm existing around that right, even among the society of states who ratified that law. There may be a great many cases of overlap (human rights codified in international law that have been translated into norms as well), but there is not always an overlap such that we should interchange the concepts of "norms" and "laws."

Implications of Conceptual Slippage (or "So what?")

Sartori (1970) anticipated the challenge of ever broadening concepts as the field of political science attempted to make sense of an increasingly wide array of empirical phenomena. Conceptual clarity matters, Sartori (1970, 80) argues, because "concepts are not only elements of a theoretical system, but equally tools for fact-gathering, data containers." As the field embraced more quantitative approaches and attempted to aggregate knowledge to understand more generalizable trends, Sartori (1970, 1039) worried that "If our data containers are blurred, we never know to what extent and on what grounds the 'unlike' is made 'alike.'" Sartori (1970, 1053) warned of "conceptual stretching," the consequence of which would be "a sea of empirical and theoretical messiness," as "intolerably blunted conceptual tools are conducive, on the one hand, to wasteful if not misleading research, and, on the other hand, to a meaningless togetherness based on pseudo-equivalences." In our

case here, stretching the concept of the norm to conflate it with examples of moral principles, supererogatory standards, or law may result in, as Sartori warned, a false aggregation of knowledge, where unlike items are mixed together to inform theoretical arguments built on shifting conceptual grounds. Conceptual clarity and precision is essential in a complex empirical world to ensure scholars build sound theories through the comparison of like categories.[21] In our case, a return to conceptual clarity over what does (and does not) constitute a "norm" brings into relief at least four avenues for future research.

First, the conceptual slippage of the norm concept has led scholars to overlook the critical importance of the actor-action link necessary in enabling social pressure and the shaming of violators, a key attribute of norms. As discussed in this article, norms must have a specified actor from whom an appropriate behavior is expected. The actor component is essential in enabling any social sanctions or pressure against a "norm violator," which cannot exist if there is no specific actor from whom a behavior is expected in the first place.

The ability to leverage shame and social sanctions is a powerful attribute of norms. Moral principles, however, which lack a clearly defined actor, do not have this same attribute. Understanding this difference matters for more than conceptual clarity and effective theory building (though these are certainly important). It also matters for how human rights scholars study human rights advocacy and the role of shaming in human rights campaigns. Why is shaming more effective for some human rights campaigns than others? It may be that some human rights have norms that activists can leverage where other rights may have no shortage of moral principles but no norms. Following the logic from this article, we should expect that shaming would be less effective for human rights that lack a norm, even if these rights have collectively shared moral principles. There may be a consensus that "It is morally good that people should be fed" or "It is right for people to have homes," but such moral principles do not provide the benefit of an actor from whom you would expect a behavior (such that when the actor deviated from this expected behavior they could be identified as a "violator").

In our discussions of norms and the challenges faced when attempting to use shaming strategies in issue areas that lack norms, our field could learn much from activists engaged in this work. Kenneth Roth, the executive director of Human Rights Watch, examines the challenge faced by international human rights organizations in advocating for economic and social rights, noting that the key tool leveraged by these organizations (shaming) requires clarity on "violation, violator, and remedy."[22]

> Although there are various forms of public outrage, only certain types are sufficiently targeted to shame officials into action. That is, the public might be *outraged about a state of affairs*—for example, poverty in a region—*but have no idea whom to blame.* Or it might feel that blame is dispersed among a wide variety of actors. In such cases of diffuse responsibility, the stigma attached to any person, government, or institution is lessened, and with it the power of international human rights organizations to effect change.[23]

A social group may share the common belief that a condition such as poverty, hunger, or homelessness is inappropriate, but without a norm attributing an expected behavior to a particular actor, we should expect shaming to be less effective.[24] When activists are working around issue areas that lack norms, they face

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[21] For a discussion of the challenge of conceptual stretching in classifying what counts as a "democracy," see Collier and Levitsky (1997).

[22] Roth (2004, 68).

[23] Roth (2004, 67). Emphasis added.

[24] There also may be no shared social understanding of what Henry Shue (1980) would refer to as "correlative duties" to ensuring a given right. According to Shue (1980, 51–53), all basic rights have three correlative duties ("avoid-

significant obstacles in compelling behavioral change.[25] Shared social expectations about *who ought to do what* (i.e., norms) can thus be very beneficial to activists. They are not, however, always available around all issue areas. Greater conceptual clarity in highlighting the difference between moral principles and norms allows us to understand challenges to the use of social shaming and why shaming may be less effective around some human rights (which have moral principles but no norms) than others, where a norm is present.

Second, by highlighting the essential role of an actor-action link in constituting a norm we can more clearly understand challenges to norm construction. In the case of many economic and social rights, for instance, constructing a norm would be no easy task. Doing so would require constructing both responsibility for the right by a particular actor as well as a concrete appropriate behavior the responsible actor would be expected to perform. When responsibility for a given right could be conceptualized as falling on the shoulders of several actors, spanning both the public and private sector, or no actor at all, and the possible solutions or appropriate responses to the problem are understood as vast and varied, norm development will be especially challenging.

If we believe that norms can be powerful in enabling and constraining action, as constructivist scholars certainly do, then understanding the challenges to norm construction, especially in articulating an actor-action link around many human rights, is important to those seeking to understand advocacy in this issue space. Consider, for example, perhaps the most influential model of transnational advocacy in the IR literature: Keck and Sikkink's (1998) "boomerang model." In this model, an underlying assumption is that all relevant actors (local and international NGOs, intergovernmental organizations, and outside states) agree on a common target in an advocacy campaign. In the case of human rights advocacy, the assumption is that there is no ambiguity as to whom activists should target when a particular human right is violated. This assumption may well hold when a norm already exists around a specific human right. If indeed there is a socially shared expectation of a specific appropriate behavior by a given actor, if that actor deviates from the behavior expected of it, it would make sense that activists would agree to target that "norm violator." As this article argues, however, not all human rights have norms. Without the existence of a norm around a particular human right, "boomerang" advocacy behavior is less likely to take place, as there is no socially shared expectation that any given actor ought to have behaved in a specific way in the first place. Clarifying the boundaries of the norm concept and highlighting that not all human rights have norms can thus enable us to ask new questions about how advocacy functions in issue areas that lack norms.[26]

Third, in unpacking the "oughtness" component of a norm, and holding its socially obligatory nature in contrast to that of supererogatory standards, which are socially nonobligatory, scholars are better able to consider challenges to what might constitute evidence of a norm in the first place. A challenge for using verbal justification or praise in either content or discourse analysis as evidence of a norm is that such a method would be unable to distinguish supererogatory standards from norms, as both may result in similar reactions of praise or types of verbal justification. This insight allows us to engage in a more thoughtful discussion of how such methods might be modified in order to be able to distinguish between these two types of moral claims and also encourages us to consider the importance of social costs (or social response to violation) as evidence of a norm.

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ance, protection, and aid"). Instead of thinking of rights as "negative" or "positive" (as some had categorized civil and political versus economic and social rights), according to Shue we should understand all basic rights as requiring these three types of duties to ensure their realization.

[25] See Jurkovich (forthcoming).

[26] For an example of how international antihunger advocacy functions in an issue area where there is no norm among top international antihunger organizations, see Jurkovich (forthcoming).

Finally, the conceptual slippage of the "norm" concept has led to the mistaken assumption that human rights, if codified in law, necessarily have corresponding norms. As I have argued here, whether norms exist or not around a human right codified in law should be an empirical question, not assumed a priori. In highlighting that not all rights have norms, we are enabled to ask new questions like: why have some human rights, codified in law, successfully translated into norms while others have not?

Conclusion

The "norm" is not the only concept in our toolkit for understanding the social world, but it has become the default concept for much scholarly conversation, especially in the human rights literature. While norms can be very powerful in explaining political behavior, they may be less common than we think. This article has clarified the boundaries of the norm concept and, in so doing, highlighted the distinction between norms, moral principles, supererogatory standards, and formal law. Conceptual stretching of the "norm" concept may impose serious costs on our analytical ability to understand such important concerns as challenges to norm construction, the relationship between law and norms, what constitutes evidence of a norm, and the role of shaming in human rights advocacy. Scholarly engagement with what a norm is (and what it is not) not only results in greater conceptual clarity but opens up new avenues for research and thinking in exploring the importance of social dynamics in international politics.

Acknowledgements

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