



International Relation and Theory

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Abstract: In International Relations (IR) theory, norms are widely held to be the opposite to ‘interest defined as power’ (Morgenthau). Norms are often held to be *scripts of emancipation*, and power to be a *practice of domination*. The paper argues that IR norms research all too often buys into a problematic dichotomy by adopting a binary perspective from which power is either held to be superior to norms or erased from the notion of the norm. The problem with this dichotomy is that norms are misconceived when limited to the two options of either being emancipatory values against the dictates of power politics or utopist scripts never standing these dictates in the long run. The paper aims to explore a deeper understanding of how norms are political and how elements like power, coercion, and violence circulate *within* norms and norms-related practice. To this end, it offers IR to draw on certain strands of work in legal theory, namely the legacies of American legal realism and critical legal studies, to elaborate on *how norms and norms-related practice are political*.

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Introduction: In International Relations (IR) theory, norms are widely held to be the opposite to ‘interest defined as power’ (Morgenthau 1978: 5). Either, so it seems, states play by the international rules or they play international power politics. This assumption has given rise to a major research program on why norms, from time to time, trump interest-based power politics so that, in fact, international lawyer Thomas Franck gets to the heart of this strand of work by asking ‘Why do *powerful* nations obey *powerless* rules?’ (Franck 1990: 3, italics added). Thus understood, norms are held to be *scripts of emancipation*, and power to be a *practice of domination*. It is here that this paper aims to establish a critique. It argues that IR norms research all too often buys into this dichotomy, the problem being that norms are misconceived when limited to the two options of either being emancipatory values against the dictates of power politics or utopist scripts never standing these dictates in the long run. The paper aims to explore a deeper understanding of how norms are political and how elements like power, coercion, and violence circulate *within* norms and norms-related practice. To account for the workings of power *within* norms, the paper suggests that IR may draw on certain strands of legal theory, namely the critical legacies of American legal realism and critical legal studies.

Struggling with 19th century legal formalism, inter-war American legal realism has stressed the influx of a political moment—especially the ideology of *laissez-faire* liberalism—in juridical decision-making.² For the realists, law structures bargain between different societal groups while legal practice—‘law in action’ (Pound 1910)—actively brings a coercive force of law to the fore (Cohen 1927). Drawing upon the early realists,³ critical legal studies (CLS) have—since the 1970s and 1980s—radicalized this critique and enriched legal realism with different types of—mainly continental—social theory (like Marxism, Frankfurt School Critical Theory, poststructuralism).⁴ “Law is politics” is the war cry of critical legal studies’ (Teubner 1997: 152). Law structures the bargain between actors and, thus, implies a moment of power, coercion, etc. More recently, this type of critical legal thinking has stimulated a vibrant debate also with respect to international and transnational law.⁵ In IR, the adoption of this literature is rather limited, to say the least. However, while IR norms research has widely built upon a dichotomy of *norms/power*, more recently, the emphasis on the *contestation* of norms (Wiener 2014) has effectively put into question a ready-made ontology of norms and thus established an interesting vanishing point. Norms are misconceived as ready-made scripts. In the course of an ongoing social process, they remain undetermined, for being subject to a *surplus of meaning*. It is here that politics comes back into play. Norms may be put in charge for different purposes, emancipation and