# ASEAN and human rights norms: constructivism, rational choice, and the action-identity gap

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## Abstract

ASEAN's engagement with human rights is characterized by an action-identity gap; member states have created impressive regional commitments while continually violating rights domestically. This gap suggests that member states of ASEAN have used rights for political ends, the enhancement of ASEAN's legitimacy in the eyes of critics, not because they are understood as morally correct. The strategic use of norms indicates that existing recourse to constructivist accounts of norms in ASEAN, currently the dominant explanatory framework, is incorrect. This article argues that an alternative, rational choice, framework for appraising norms within ASEAN offers greater explanatory insight into how and why human rights emerged into ASEAN after 1997. This argument suggests a revised approach to understanding norm violation within

ASEAN and through that a more accurate appraisal of the nature of contemporary ASEAN.

## 1 Introduction

Over the last 15 years ASEAN's engagement with human rights has been characterized by a growing action-identity gap. Today human rights are institutionalized within the ASEAN Charter and, on paper, overseen by the ASEAN Intergovernmental Commission on Human Rights (AICHR). These rights have even been enumerated in the ASEAN Human Rights Declaration, released in November 2012. Yet each member state displays a problematic relationship with human rights norms domestically, sometimes in very extreme ways.

The action-identity gap makes it impossible to argue that ASEAN member states, as a group, have come around to human rights norms because they have been converted to the moral desirability of those. Instead the timing, nature and current status of the adoption of human rights points to those norms being used strategically to secure political ends, notably the legitimacy of ASEAN in the eyes of both its citizens and external actors. This use of norms, however, conflicts with what to date has been a largely un-problematized assumption, that if you talk of norms in ASEAN then you do so in a constructivist way. Led by the work of Acharya during the late 1990s and early 2000s, accounts of norms within ASEAN have focused on the constructivist claim that norms are constitutive of the identities of those who use them. Yet ASEAN member states have engaged with human rights norms regionally while violating those same norms domestically.

This article explores the consequences of this mismatch and argues that given the inability of constructivism to make sense of the action-identity gap an alternate explanatory framework is needed. Further I argue that rational choice provides such a framework. Rational choice is comfortable with a focus on non-material concerns such as norms, but does not go as far as constructivist scholarship in ascribing to those norms the power to shape the identity of those using them. Instead rational choice assumed that actors are simply interested in utility maximization and as such encounter norms as possible tools to help them secure their own political goals. Refocusing our understanding

of human rights norms in this way serves two ends. First, it makes sense of the action-identity gap by suggesting that ASEAN member states have used human rights norms for their own political ends and did not intend their integration into the regional framework to signal a true commitment to those norms. Second, it allows for a more focused appraisal of the nature of contemporary ASEAN by suggesting that norm entrepreneurs who have sought to socialize human rights standards have managed to insert new ideas into the regional framework but, to date at least, have not impacted on the identity of many ASEAN states and thus of ASEAN itself. This shift casts new light on the question of norm violation within ASEAN as well as suggesting new approaches to conceptualizing ASEAN itself.

This argument is presented in four parts. The first examines the history of academic interest about norms within ASEAN, highlighting when the constructivist perspective came to dominate that analysis and what the consequences of that dominance are. The second section presents the action-identity gap that has emerged surrounding human rights norms, paying particular attention to the motives of ASEAN in engaging with those norms. The third examines the conceptual significance of the action-identity gap, highlighting how the constructivist understanding both of what norms are and what norms do has not come to pass. To correct this an argument drawing on rational choice understandings of norms is presented that makes sense of the action-identity gap by better understanding the history, nature of form of ASEAN's human rights engagement. The fourth section examines the broader relevance of this argument for debate about the nature of ASEAN and also considers the significance of this argument for other areas of academic interest into ASEAN and its activities.

## 2 Norms and ASEAN: the rise of constructivist dominance

While the concern with norms within ASEAN can be dated back over 20 years, the form that this concern has taken has shifted over time. The traditional approach to understanding norms in ASEAN was to focus on their impact on the behavioral patterns of member states. In this vein Donald Weatherbee in 1986 highlighted the 'established norms of intra-ASEAN behaviour', in particular non-intervention (Weatherbee,

1987, p. 1227). Buszynski in the same year drew attention to how the need to maintain the norm of regional unity shaped the behavior of ASEAN vis-à-vis the question of Vietnam (Buszynski, 1987, pp. 765, 768). In 1990 Antolik wrote that ASEAN member states continued to participate with ASEAN because 'basic norms of behaviour', explicitly restraint, non-interference, respect, consultation, and responsible consideration of fellow members, provided a valuable path toward a secure external environment (Antolik, 1990, p. 10).

This concern with norms and behavior continued through into the 1990s. In 1995 Chin Kin Wah suggested that the early 1990s marked a period of norm consolidation, where the standards of legitimate behavior of ASEAN that had been enshrined in the Treaty of Amity and Cooperation of 1976 were reinforced (ASEAN, 1976, discussed in Wah, 1995, p. 429). The traditional approach to understanding norms within ASEAN dominated discussion about the effects of the 1997 Asian Financial Crisis. As ASEAN members struggled to respond to the economic and social costs of the crisis, scholars started to question whether existing ASEAN norms were suitable in a post crisis context. Narine noted that the basic norm of non-intervention was at stake, paying particular reference to the 1997–98 debate between members over 'flexible engagement' and 'enhanced interaction' (see also Funston, 1999, p. 208; Narine, 1999, p. 370; Hund, 2001).

The traditional account of norms within ASEAN was theoretically unsophisticated, displaying little concern with explaining why norms exerted the assumed influence over behavior. During the late 1990s a different approach to norms within ASEAN began to emerge that sought to address this issue. Leading this charge was Acharya who not only noted the explanatory gap but also through a series of publications in the late 1990s and into the 2000s filled it. Acharya ascribed norms a specific role and, because of that role, a particular power. In 1997 Acharya wrote that he was interested in the relationship between norms and identity creation within the Asia-Pacific region (Acharya, 1997, p. 320). The concern with behavior was still present, but now behavior was a window through which scholars could interrogate a more fundamental issue, the identity of actors that drove that behavior. In developing the link between norms and identity Acharya was drawing on the emergence and rapid mainstreaming of constructivism in the ongoing debates within International Relations Theory since the early 1990s. To reveal why

Acharya's account of norms was different to that which had gone before requires an appreciation of what constructivist scholarship says about norms.

The constructivist position provides what is often labeled as a 'logic of appropriateness' account of the world (March and Olsen, 1998, pp. 948–951). This labeling refers to the constructivist assertion that actors do what they believe to be right, or appropriate, in a given situation (Wendt, 1992, p. 397). The assessment of what appropriateness might mean does not occur in a vacuum, but instead is constructed as actors engage with each other and the social structures around them. Hurd describes these structures as 'the institutions and shared meanings that make up the context of international action' (Hurd, 2008, p. 303). To a constructivist norms are vitally important, because it is norms that both constitute the social structures that characterize the world and also that express the particular understandings of appropriateness that actors will then respond to. The nature of this response is particular; constructivists focus on the mutual constitution of the social world, that ideas and actors shape each other. Norms impact on the identities, and interests, of actors in a fundamental way (Klotz, 1995, p. 460; Björkdahl, 2002, p. 9; Flockhart, 2002, pp. 75). The behavior of actors is explicable through recourse to the internalization of particular identities and values expressed in social structures (Schimmelfennig and Sedelmeier, 2005, p. 9).

Acharya's argument then was not simply that norms are important but instead was the more theoretically sophisticated claim that norms exercised their importance because they were intimately linked with the creation and maintenance of specific national, and regional, identities. Busse writing in 1999 paralleled Acharya's 1997 suggestion focusing on how norms and regional identity formation better explained the construction and endurance of Southeast Asian security (Busse, 1999). This argument came to dominate Acharya's work on ASEAN during the 2000s and, through that, became more widely accepted within the study of the region. In his 2001 book *Constructing a Security Community in Southeast Asia* Acharya made this link explicit. Social communities, he argued, 'rely on norms of behaviour' which 'prescribe and proscribe' legitimate and illegitimate conduct (Acharya, 2001, p. 24). Understanding these norms required a constructivist framework because only constructivism could capture the dual ability of norms to both regulate behavior and define and constitute identities (Acharya, 2001, p. 24).

In his 2004 *Norm Localization and Institutional Change in Asian Regionalism* article Acharya again positioned his focus on norms within the constructivist framework (Acharya, 2004, p. 241).

So strong was Acharya's argument about understanding norms that it has defined the contemporary approach to norms within ASEAN. After Acharya the study of norms was wedded to the use of a logic of appropriateness framework. Katsumata suggested that while realists examined power constructivists examined norms (Katsumata, 2006). Kawasaki made the same link (Kawasaki, 2006, p. 226) as did Eaton and Stubbs (Eaton and Stubbs, 2006, p. 44) and He (He, 2006, p. 193). This is not to say that there was no questioning of the norm-constructivist link, but rather that what little questioning there was has been fragmentary and never followed through in a clear and methodical fashion. Khoo in 2004 suggested that Acharya adopted a 'constructivist approach to norms' which at least hints at there being other approaches (Khoo, 2004, p. 38). Most interestingly Collins titled a section of his article 'Norms: Rational or Ideational?', but did not follow through on the conceptual significance of this assertion (Collins, 2007, p. 214). Perhaps most tellingly, however, even those who have criticized Acharya's account have done so not because of the norm-constructivism link that he presents, but via a rejection of the necessity of examining norms at all, labeling their study as a 'red herring' (Khoo, 2004, pp. 37–38).

## 3 The action-identity gap in ASEAN's engagement with human rights

By the late 2000s the longstanding interest in norms within ASEAN had been refashioned into a specifically constructivist exploration of norms and their impact on the identity of actors. The shift from a concern with norms to a concern with constructivist accounts of norms was almost unchallenged in the literature approaching ASEAN from a theoretical perspective, seemingly accepted by both proponents of that perspective and those who opposed them. While this shift has undoubtedly been valuable to extending our understanding of ASEAN, the following discussion will present and then investigate a particular weakness of the dominance of constructivist accounts of norms, namely the action-identity gap all ASEAN member states have displayed surrounding the issue of human rights. Revealing the action-identity gap is best achieved by examining

two diverging trends; first, the current status of the regional commitment to human rights as expressed through the aims and institutions of ASEAN and second, the situation of human rights within ASEAN member states. To clearly present the action-identity gap particular attention is paid to civil and political issues as an illustrative example of the mismatch between regional and national standards.

At the regional level the Charter was signed on 20 November 2007, and committed ASEAN to strengthening democracy, good governance, and human rights (ASEAN, 2007, Article 1.7). The Charter also noted that ASEAN was governed by 'democracy' (ASEAN, 2006, Article 2.H) and the 'respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice' (ASEAN, 2007, 2.I). The Charter called, in Article 14, for the creation of an ASEAN Human Rights Body, a commitment that was fulfilled by the creation in 2009 of the ASEAN Intergovernmental Commission on Human Rights (AICHR). The AICHR was created with the desire 'to promote and protect human rights and fundamental freedoms of the peoples of ASEAN (ASEAN, 2010). ASEAN, on 19 November 2012, finally released the long awaited text of the ASEAN Human Rights Declaration at the 21st ASEAN Summit held in Phnom Penh. While the text has met with both critique and praise, what is important for the argument here is that it provides the most detailed commitment to rights yet seen at the regional level. The Declaration lists 40 principles that guide ASEAN across the areas of Civil and Political, Economic Cultural and Social and Development rights. The Declaration suggests in principle 12 that every person has the right to personal liberty. In principle 21 the right to privacy is protected. Principle 22 protects the freedom of thought, conscience and religion, principle 23 the right of freedom of expression, 24 the right to peaceful assembly, and 25 the right to participate in their own government, including via periodic and genuinely democratic elections (ASEAN, 2012).

By late 2012, at least on paper, ASEAN was a regional organization that both listed rights as a key aim of regional cooperation and institutionalized that concern in the AICHR. Yet the status of human rights within ASEAN member countries has not matched this ever-growing regional engagement. A series of academic publications have exposed and investigated this shortcoming, notably Thio in 1999, Mohamad in 2002 and Linton in 2008 (Thio, 1999; Mohamad, 2002; Linton, 2008). Taking

only the most recent of these, Linton concludes that ASEAN states, with regard to the two conventions on Women and Children, have 'a long way to go' before they comply with the rights of the conventions they have ratified (Linton, 2008, p. 490).

Updating, but not fundamentally contradicting, the findings of these articles are the evidence about human rights compliance within ASEAN member states that can be gleaned from the documentary record of the Universal Periodic Review of the United Nations Human Rights Council (for the origins and workings of the UPR see Gaer, 2007; Redondo, 2008). It is important to start with the realization that despite the fact member states have agreed to the ASEAN Human Rights Declaration that includes a concern with civil and political rights, Brunei, Malaysia, Myanmar, and Singapore have neither signed nor ratified the 1966 International Covenant on Civil and Political Rights. It is unsurprising therefore that these four states display serious shortcomings with regard to the enjoyment of civil and political rights. The report on Brunei noted, 'non-Muslims face a wide array of prohibitions and restrictions that negatively affect the status of religious freedom' (United Nations, 2009a, p. 4). The report on Malaysia noted multiple books had been banned on the grounds they could have 'disrupted peace and harmony' (United Nations, 2008b, p. 9). The United Nations Special Rapporteur on Freedom of Expression noted numerous infringements of that right within Malaysia (United Nations, 2008b, p. 9).

In Myanmar serious violations of rights were across political, economic, and social rights. For example, the report from stakeholders noted that members of pro-democratic parties were denied the right to assemble (United Nations, 2011b, p. 7), and that the government failed 'to provide people with the basics needs of survival' (United Nations, 2011b, p. 8). The United Nations Special Rapporteur on the situation of human rights in Myanmar, Quintana reported to the Human Rights Council in March 2012 that Myanmar lacked the essential ingredients for the transition to democracy and maintenance of the rule of law (United Nations, 2012a, p. 4). Quintana further noted that while some steps had been made 'ongoing and serious human rights concerns' remained (United Nations, 2012a, p. 7). Singapore was criticized for possessing laws that 'directly interfered with freedom of expression' (United Nations, 2011c, p. 9) a point also made clear in the report on Malaysia (United Nations, 2008a, p. 7).

However, it is not just the four states that have not signed the Covenant that have not implemented civil and political rights in a meaningful way. The six ASEAN members who have signed and ratified the Covenant on Civil and Political Rights also have a deeply problematic relationship with those rights. Illustratively Cambodia was criticized for actively eroding citizens rights to protest and assemble (United Nations, 2009b, p. 7), for sustained attacks on human rights defenders and for actively limiting the freedom of expression of political actors (United Nations, 2009b, p. 7). Indonesia, reviewed for a second time in 2012, was criticized for letting the situation with regards to the rights of religious minorities deteriorate (United Nations, 2012b, p. 7). Arbitrary detention, ill treatment of prisoners, and torture were all mentioned, as was a failure to protect fundamental democratic freedoms such as expression and assembly (United Nations, 2012b, pp. 5–9). The Philippines 2012 review, that country's second, highlighted a series of violations of the right to life, liberty, and security of the person, including extrajudicial killings, enforced disappearances, abductions, and torture (United Nations, 2012c, pp. 6–7).

Approaching this issue from another perspective, the findings of Freedom House investigations into the status of political rights in ASEAN member states in 2012, reveal again a highly problematic relationship between on-paper commitments and actual enjoyment. On a scale where one represents full freedom and seven complete repression, Indonesia was rated two, the Philippines three, Singapore and Thailand four, Brunei and Cambodia six, and Laos, Myanmar and Vietnam seven (Freedom House, 2012). Here the action-identity gap is revealed most clearly. Three states rated as repressive with regard to political rights have just agreed to a regional human rights declaration that clearly states a commitment to political rights and civil liberties. Even the member state that now is most often thought of as progressive, Indonesia, displays a significant gap between regional and national position.

# 4 The failure of constructivism and the need for a rational choice alternative

This section examines the intersection of the constructivist argument about norms and the action-identity gap displayed regarding human rights, arguing that there is a considerable mismatch between the

theoretical expectations and the empirical reality. Having exposed this mismatch discussion turns to presenting the rational choice 'logic of consequence' alternative to constructivism. This serves as the foundation for the coming argument in the next section that applies the rational choice account of norms directly to the emergence of rights within ASEAN after 1997.

To understand the tension between constructivist accounts of norms and the action-identity gap regarding human rights, we need to dig more deeply into what constructivists say about norms. In particular, we need to consider how constructivists understand why states would promote certain norms, and how that promotion would occur across the domestic–international divide. The process of actors internalizing norms, shaping identity and thus behavior, suggests that actors take on norms as being morally correct. This reasoning further suggests that there should be congruence between the norms propagated by actors internationally and the norms they adopt domestically. While Alexander Wendt was keen to distinguish the internal and external identities of the state (the corporate and social identities, respectively, Wendt, 1994) almost all other constructivist scholarship has downplayed this division in favor of a far greater degree of linkage between the two realms (Sikkink, 1993 being a notable early example). What the state does internationally is a reflection of domestic politics and vice versa. Given that norms articulate moral goods it is impossible for them to be right at one level and wrong at another. They transcend the domestic-international division because they permeate the thinking of decision-makers who operate on both sides of that supposed divide (Thomas, 2001 articulates this argument clearly). The action-identity gap is therefore an anathema to constructivism; norms simply cannot be wielded by actors who do not believe in them because their very existence is predicated on interests and identities of actors existing in congruence with those norms.

It is this requirement of congruence that also rejects a rival approach to explaining the action-identity gap that needs to be addressed before the argument can proceed. Many have written about the creation of a unique 'regional identity' that overlays the various national identities. Acharya in 2005 suggested that this identity was a 'quest not a fact', indicating the evolving status of such affiliations (Acharya, 2005, p. 104; Jones and Smith, 2007b, p. 166). Collins suggests that 'it is possible to discern the discourse of regional identity' (Collins, 2007, p. 215). Kraft

has also asserted that human rights engagement should be viewed through the lens of regional identity formation (Kraft, 2001, p. 1). While this argument may help explain the collective push toward rights, it does not alleviate the tension between national and regional standards. Regional identity, when discussed in the security field, is posited as the corollary of domestic positions, not a contradiction of it. The commitment to state security and non-intervention as national aims spills over into a collective regional identity that promotes similar standards. In the area of human rights, there is not compatibility but sustained incompatibility. Regional identity does not explain this gap, at most it illustrates the opposing sides without explaining the gap between them.

We are left then in an uncomfortable position. Understanding ASEAN's engagement with human rights requires a focus on norms, yet the dominant framework to interrogating norms, constructivism, is unable to address the defining feature of ASEAN's human rights journey, the action-identity gap. The solution to this impasse is to replace the logic of appropriateness/constructivist framework with the logic of consequence/rational choice account of norms. The core of the constructivist-rational choice divide is an argument about the nature of actors, their ontology. Constructivists assert that the identity and interests of actors are shaped by the norms that they interact with. Andrew H. Kydd, writing in the 2008 *Oxford Handbook of International Relations* suggested three opposing characteristics of rational choice that are particularly relevant here; actors approach issues rationally, that this rationality was measured against the pursuit of fixed interests tied to fixed identities and that normative beliefs were not central in the explanation of behavior (Kydd, 2008, p. 426). These fixed interests are most often described in the language of utility maximization; actors are constantly concerned with their own power, position, and prestige relative to others. Actors 'choose among alternatives by evaluating their likely consequences for personal or collective objectives, conscious that other actors are doing likewise' (March and Olsen, 1998, p. 949). It is this process of choosing preferred actions in light of the potential outcomes of those actions that gives this approach the logic of consequence label.

Early rational choice accounts were wholly materialist in design, meaning that they rejected the significance of social concerns such as norms entirely. Recent rational choice work, known as thin rationalism, has moved away from such a dogmatic claim and now asserts that norms

are a useful part of explanatory frameworks (Checkel and Zurn, 2005b, p. 1058). In the study of the European Union and its socialization powers, scholars, such as Frank Schimmelfennig, Ulrich Sedelmeier, and Jeffrey Checkel, have all engaged with the constructivist-rational choice divide in order to better understand how norms effect candidates for EU membership (Checkel, 2005a; Schimmelfennig and Sedelmeier, 2005). Indeed, at least in terms of understanding the socialization of candidate countries, it has been shown that rational choice offers a *better* framework of appraisal for norm-rich environments than does constructivism (Schimmelfennig and Sedelmeier, 2005, p. 9). True to the fundamentals of rational choice, norms are viewed in a far more circumscribed way than a constructivist would suggest. Rational choice asserts that norms are 'intervening variables' between actors and outcomes and exert no effect on the interests and identities of actors (Schimmelfennig, 2000; Schimmelfennig *et al.* 2003, 2006). Put another way norms mediate 'between interest and political outcomes with little or no independent explanatory power' (Björkdahl, 2002, p. 11; Björkdahl, 2004). Norms are tools to be used, manipulated, and abandoned as shifting fortune dictates, and we understand how actors engage with norms in terms of how drawing on norms permits the pursuit of utility maximization.

## 5 Rational choice, ASEAN, and human rights norms

This section applies the rational choice take on norms to the story of ASEAN's engagement with human rights already documented above. I argue that rational choice offers a middle path between the outright rejection of norms and the constructivist overstatement of the power of norms. Contemporary rational choice suggests that non-material things, such as norms, are important in explaining the nature of contemporary ASEAN. However, the importance of norms is not because they have radically recast the identities of ASEAN and its members, but rather that they have widened the array of options and strategic choices available to regional elites to choose from in pursuit of their own self-interested concerns. The intention here is to illustrate how ASEAN's adoption of human rights norms subscribes to rational choice understandings of norms as intervening variables between the presumed identity of actors and their actions. This is achieved by examining two things;

the timing of ASEAN's adoption of human rights with a particular focus on the role of norm entrepreneurship and the nature of ASEAN's adoption.

The timing of ASEAN's adoption of human rights suggests that member states used human rights norms as a way to solve a pre-existing political problem, the nature and direction of the regional reform process that had been underway since 1997. The trigger was the Asian Financial Crisis that started in July 1997 with the collapse in value of the Thai Baht and rapidly spread across, and eventually beyond, the region. The crisis led to not only academic doubt about the future of ASEAN, but also widespread public questioning of the value of regional cooperation given ASEAN seemed so powerless in the face of the crisis (see Funston, 1998, p. 29; Ahmad and Ghoshal, 1999, p. 776; Kraft, 2000). ASEAN member states responded to this by embarking on a process of regional reform that would, eventually, develop a human rights component to it. It is the nature of this reform process, together with the timing of the emergence of human rights into it, which substantiates the rational choice account of norms. Between 1997 and 2003 ASEAN members engaged in open-ended discussion about the direction and nature of any reform. These discussions reveal a general interest in social issues, but not particular move toward human rights. In December 1997 ASEAN members, in Vision 2020, called first for a commitment to 'caring societies' (ASEAN, 1997) where 'all people enjoy equitable access to opportunities for total human development' (ASEAN, 1997), then a belief that 'individual rights and civic responsibilities' (ASEAN, 2001) were important to the realization of that development. The Bali II Accords of 2003 that spoke of the creation of an ASEAN Community did not mention human rights at all (ASEAN, 2003).

2004 would prove to be the watershed year. In the Vientiane Action Plan, ASEAN asserted that human rights protection was to be a vital part of the envisaged ASEAN Security Community (ASEAN, 2004, 1.1.14). This signals a dramatic increase in both the profile of human rights within the reform process and the significance of human rights to the success of that agenda. From this commitment sprang the positioning of human rights as a key aim of the ASEAN and the commitment to creating a human rights body, both located in the 2007 ASEAN Charter, and the creation of the ASEAN Intergovernmental Commission on Human Rights in 2009.

The dramatic shift from the nature of discussion before 2003 to that of 2004 afterwards is explicable by understanding how ASEAN member states 'learnt' about human rights norms. There is considerable evidence that the link between regional reform and human rights was made first not by ASEAN member states, but through the workings of Track Two and Track Three actors. Caballero-Anthony, among others, has already highlighted the role of ASEAN-ISIS during the drafting of the ASEAN Charter (Caballero-Anthony, 2008, p. 73; see also Collins, 2008), but the pre-2004 situation is similar. Here the ASEAN-ISIS network is again prominent, but so too is the Working Group for the Establishment of a Human Rights Mechanism (Phan, 2008, pp. 5–7; Tan, 2011). The Working Group in particular took the role as a norm entrepreneur regarding human rights within ASEAN. The Working Group both explicated the link between regional reform and human rights and, more specifically, the relationship between the nascent ASEAN Security Community and rights protection. These groups suggested potential ways forward for an ASEAN concerned with stabilizing its image both in the eyes of its own citizens and external observers. Regional elites engaged in the rebuilding processes learnt human rights norms from external actors and then chose to incorporate them into ASEAN to achieve a pre-existing goal. Rational choice accounts of learning support this claim, believing that learning is little more than the acquisition of new information as a result of interacting with others, and then using this information to alter strategies, but not fundamental preferences or identities (Checkel, 1997, p. 7).

The argument being made here intersects with that of Hiro Katsumata. In 2009 Katsumata argued that ASEAN had engaged with human rights out of a desire to emulate Western states and organizations in order to enhance the legitimacy of ASEAN (Katsumata, 2009, p. 620; Katsumata, 2011). The emphasis to Katsumata lays in a process of mimetic adoption, in order to secure ASEAN's identity as a 'legitimate institution in the community of states' (Katsumata, 2009, p. 621). To Katsumata human rights norms offered a new way to secure ASEAN in the eyes of its critiques. As such the use of human rights norms was strategic inasmuch as they were used as a tool by regional elites to achieve predefined political ends. Reinforcing this claim is the current status of regional human rights protection. Tellingly ASEAN members have consciously avoided developing powerful enforcement mechanisms. The

Terms of Reference (ToR) for the AICHR suggest ASEAN and its members remain more than hesitant in their engagement with rights. While the ToR in Article 1.1 commits to 'protect and promote human rights and fundamental freedoms of the peoples of ASEAN' (ASEAN, 2009, 1.1.) it further commits to respecting the 'independence, sovereignty, equality' of member states (ASEAN, 2009, 2.1(a)). The ToR even go so far as to state the centrality of 'non-interference in the internal affairs of ASEAN member states' (ASEAN, 2009, 2.1(b)).[1] The typical reason given for such reluctance is given as ASEAN's continued preference for state security and regime stability over different conceptions of security (Caballero-Anthony, 2004, p. 161) and the inability to integrate human rights meaningfully into ASEAN's institutional architecture (Eldridge, 2002, p. 213). Rational choice arguments about norms extend those by revealing that the engagement with human rights as strategic solutions to political problems was never intended to provide serious enhancements to regional oversight of human rights standards.

Rational choice accounts of norms therefore explain the action-identity gap because as intervening variables norms are no longer expected to influence on the identity of actors. Instead norms are understood as tools to achieve certain, political, ends. Instrumental usage suggests that the apparent promotion of human rights regionally does not depend on prior or even parallel domestic adoption of rights. The regional level serves as a distinct arena of political action and serves rhetorical and political purposes.[2] There is nothing contradictory between ASEAN's regional adoption of human rights standards and assertions that ASEAN represents, on balance, an illiberal peace (Kuhonta, 2006, p. 339).

A point of clarification is necessary. Clearly engagement with human rights by ASEAN members is not uniform. Indonesia since the transition to democracy has shown a clear move toward domestic protection of human rights, and states such as Thailand, the Philippines, Singapore, and Malaysia occupy a 'middle position' while newer members, Vietnam, Laos, Cambodia, and Myanmar all display considerable problems with rights domestically. Given this variation how can the

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1  Note that authors such as Renshaw have argued that the AICHR is not limited by the formal wording of its mandate (Renshaw, 2010; see also Munro, 2010).

2  The viability of this gap over the longer term is not guaranteed. Significant work on 'cognitive dissonance' suggests that such gaps are rarely enduring (Checkel and Zurn, 2005b, p. 1053).

argument about instrumentality be defended? Crucial here is the nature of ASEAN, in particular the political practices that govern the relationship between members and then between those members and the regional organization itself. It has long been established that unanimity, consensus and strict adherence to inter-governmentalism shape ASEAN's political space (Ramcharan, 2000, p. 82; Hund, 2001, p. 55) It is this strict intergovernmental approach that provides the justification for instrumental engagement as an aggregate position. Those countries that lagged most in terms of human rights had to agree to the regional reforms, they were just as empowered as were Indonesia. The reasons why ASEAN itself, as a regional organization representing the compromise position of 10 members, came to adopt human rights were instrumental, even if some of the member states were more committed than others.

## 6 Reflecting on ASEAN's instrumental use of norms

The argument presented above serves to break the 'all or nothing' thinking that has characterized the study of ASEAN for too long. It allows for an analysis of ASEAN as a norm-rich environment without the concomitant, and at least sometimes inappropriate, intellectual baggage that accompanies constructivism. The presence of norms does not automatically dictate the nature of those norms, or how different actors engage with them. The constructivist dominance of normative analysis has led scholarship into a quandary about the issue of compliance. Why would states not comply with the norms they promote is a question constructivists find hard to grapple with, given the presumed nature of norms they are working with. Yet the failure of ASEAN members to comply with regional norms is widely documented (Hund, 2002; Nischalke, 2002; and more recently Nair, 2011, p. 247) and much lamented by observers. Rational choice accounts, by delinking the use of norms from the impact of norms on the identity of norm users, suggest that non-compliance is quite understandable. States use norms when it is in their strategic interest to do so, and violate them when their cost–benefit calculations suggest that that is the most effective course of action available to them.

Such discussion holds promise for the wider analysis of ASEAN. ASEAN is often depicted as weak, ineffective and at the mercy of external events and the political whims of member states. Jones and Smith

famously decried ASEAN as an 'imitation community' (Jones and Smith, 2002; see also Jones and Smith, 2007a). ASEAN is often thought to have failed because its norms are in contradiction with each other (human rights and non-intervention, state security, and human security), revealing at best poor planning or, at worst, a complete lack of vision. The instrumental use of norms suggests an ASEAN more sophisticated than either of those prognostications. People may agree, or disagree, with the reasoning behind ASEAN's engagement with rights. They may want ASEAN to be more explicitly genuine in believing in rights, calling for more detail and regional oversight is a regular refrain from civil society, but it is hard to say ASEAN has 'muddled' its way to the current point. In the wake of the Financial Crisis ASEAN members innovated in a contested normative environment, saving the traditional goals of ASEAN by tying those to new issues such as human rights. This choice was consciously made and strategically driven. That we may wish that the engagement with rights emerged out of genuine moral conversion should not blind us to the possibility that the decisions made were logical and coherent. ASEAN and its members have, through the prism of dominant understandings of what ASEAN is for, displayed consistency in designing and implementing reforms to the regional body.

The findings of this study have implications that suggest the need both for further research and a reconsideration of research already undertaken. The use of norms to appraise the nature and actions of ASEAN is not limited to the realm of human rights. Fields as diverse as the environment (Elliott, 2003; see Elliott, 2012), economic policy (see Ravenhill, 2008), and comparative regionalism (Jetschke and Murray, 2012), to name but three, would all potentially benefit from a decoupling of norms and the constructivist appraisal of them to understand more fully the causes and consequences of ASEAN activity. To briefly illustrate this, consider the debate between what John Ravenhill in 2009 termed the ASEAN boosters and the ASEAN skeptics (Ravenhill, 2009, p. 220). ASEAN boosters, which Ravenhill links to constructivist scholarship, emphasize how norms have generated a sense of community and a willingness to cooperate. Particularly important here is the notion of a Security Community where states become integrated to the point that feelings of community and trust allow them to deal with conflicts of interest without recourse to violence (Deutsch, 1957). The other group identified by Ravenhill jump on the weaknesses of the booster's

argument. The skeptics note that the vast majority of regional initiatives exist on paper only and result in very little change in the behavior of member states.

Both sides of this debate have parallel, if inverse, strengths and weaknesses that the argument presented in this article casts new light upon. The boosters do identify the considerable regional activity that has characterized the recent period of ASEAN reform. However, boosters struggle to explain why the norms they hold so dear have not promoted compliance pressures given the presumed nature of those norms. Skeptics are far more adept at explaining the lack of results within ASEAN, however, offer scant explanation why ASEAN member states would spend so much time creating regional initiatives that are left to wither as soon as they are planted.

Until now arguments between these two sides have appeared irreconcilable, but the argument presented here about revising our understanding of the nature and usage of norms suggests a way forwards. In particular, rational choice appraisals of norms suggest a middle way between these two unpalatable extremes by accepting that normative propositions can shape behavior while not attaching to that the further belief that those norms are internalized and so should be complied with. Norms are no longer assumed to be deeply held ideational truths and instead exist as intervening variables that hold more or less value dependent on what political goals are being pursued. Nesaduri's recent suggestion that the complexity of ASEAN requires a range of theoretical perspectives to do investigate (Nesadurai, 2009, p. 91) should be taken as a general call for flexibility when discussing ASEAN within, and between, theoretical perspectives.

## 7 Conclusions

The role of human rights within ASEAN since 1997 supports Acharya's belief that ASEAN regionalism was quintessentially a normative affair (Acharya, 2005, p. 113). However, Acharya's statement, in and of itself, tells us little about how best to appraise the nature of those norms. ASEAN's engagement with human rights since 1997 is best characterized by the action-identity gap that sees regional standards moving way beyond domestic political commitment. In turn, this gap supports the argument that the adoption of human rights is attributable not to a

universal conversion to the moral validity of rights norms but for instrumental and political ends, notably legitimacy in the eyes of external and internal actors. It is this instrumentality that cuts to the heart of existing constructivist appraisals of norms within ASEAN because it problematizes what all constructivists assume, that norms shape identity as much as behavior. To better understand ASEAN's engagement with human rights norms, the norm-constructivist link has been criticized as unnecessary and shown how rational choice appraisals, when freed from the first level frameworks that to date have dominated discussion of ASEAN, offer a more incisive analysis of ASEAN's engagement with norms.

The re-appraisal of what norms can be, and how they can be used, suggests that a commitment to ASEAN as a norm-rich environment does not necessarily mean that all member states believe the norms they promote. Dissonance between domestic and international positions, between what norms say and how you respond to them, is part of normative contestation, not evidence that there are no meaningful norms. Some actors may believe that the norms they promote are morally valuable while others manipulate them for political ends. This has profound impact not only on questions of human rights within ASEAN, but also on all areas where norms may have importance. It is perhaps fitting that the complexity of ASEAN as a regional body finds itself mirrored in the complexity of the conceptual tools we bring to bear to study it.

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