

**Compliant(ish): Norm evasion and avoidance in doping, tax, and
Indigenous rights**

by

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Abstract

Norms literature assume that opponents of norms do not comply with its prescriptions, and will actively reject its' logic patterns. While this may describe some patterns of norm contestation, actors that openly contest generally accepted norms may incur unbearable penalties. Other theories presume that a state may accept a norm's logic patterns, but not comply as a result of an inability to comply.

Evasion and avoidance present a different way of envisioning how actors may approach norms, compliance, and logic systems by delinking compliance and acceptance of normative logic. These concepts introduce opportunism as a key variable that also challenges presumptions about actor intentions.

By examining the cases of doping in sport, tax law, and Indigenous rights, a pattern emerges where actors have been able to manipulate a norm's compliance signals to technically comply with a norm while defeating the norm's objectives. In turn, this allows actors to enjoy the benefits of non-compliance or partial compliance and compliance simultaneously, and escape detection by appearing to be compliant with the norm itself. These two concepts implicitly challenge the concept that compliance is a binary variable, and builds on a growing literature that suggests that the grey area between the poles of compliance and non-compliance may be more complex than expected.

Preface

This thesis is original, unpublished, independent work by the author, Dominic Lai.

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List of Abbreviations

ADAMS - Anti-Doping Administration and Management System

ARAF - All Russian Athletics Federation

FSB - Federal Security Service of the Russian Federation

IAAF - International Association of Athletics Federation

IOC - International Olympic Committee

IPC - International Paralympic Committee

NADO - National anti-doping organization

NOC - National Olympic Committee

NPC - National Paralympic Committee

UNDRIP - United Nations Declaration on the Rights of Indigenous Peoples

WADA - World Anti Doping Agency

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Introduction

Spring normally means different things to different people. For accountants, it usually signals the time of year when they get inundated with shoeboxes full of receipts and papers. As the saying goes, only two things in life are certain; death and taxes. But while escaping death resides (for now) solely in the realm of science fiction and fantasy, escaping the full brunt of tax payment is possible, and even accepted. Common knowledge might well be that accountants are not paid for their ability to just bookkeep, but for their ability to find ways for their clients to pay less tax. Some do so somewhat legally; the field calls this tax avoidance. Some do it clearly illegally; we call this tax evasion. These terms are useful in defining legality, illegality, and the grey zone in between these two poles. Interestingly, evasion and avoidance do not necessarily challenge the system directly. Actors act clandestinely, while possibly even paying some tax to avoid the suspicion of tax authorities. Importantly, the system must exist for an evading actor to reap the benefits of the system while shirking the costs of participating. In this example, the state and its income streams must continue to exist, else the benefits of state citizenship disappear.

Can we apply these terms to norms? Theories about norm socialization usually boil down compliance to whether or not an actor's actions and rhetoric align with the norm, but what if the indicators of norm socialization can be hijacked to conflate non-compliance with compliance? Discourse and behaviour indicate that an actor has been socialized to the norm, but what socialization means is questionable. This might be socialization where the state fully incorporates the norm into its operating logics, which in turn informs most of its actions, rhetoric, and thought. It could also mean that an actor is socialized to the *existence*

of a norm, and can act or speak in a normatively compliant way even though such action would not seem in an actor's best interests. Borrowing from Checkel, why is the dog not barking even when something is stepping on its tail? It is possible that it does not mind the intrusion on its personal space, but this is not always likely. Alternatively, and as I argue, it has learned that barking in a silent kennel is noticeable, and has found alternate ways of expressing displeasure.

I explore a potential gap in existing literature on contestation, compliance, and socialization, and argue that the question of intent or faith should be inserted into the socialization equation to more fully understand the ways in which (non)compliance indicators can be manipulated. Checking discursive and material compliance as indicators of norm socialization may overlook how those indicators are generated. Evasion and avoidance seek to point out that actors can get around norms while seemingly engaging in compliant behaviour. What if actors have found ways to send costly signals without incurring much, if any cost? Are there ways of playing by normative rules all while breaking the spirit of the rules? By examining the cases of doping in sport, tax law, and Indigenous rights in Canada, I argue that evasion and avoidance represent another way of thinking about norm contestation by manipulating compliance signals in order to engage in prohibited practices without necessarily incurring penalty.

Existing literature on socialization and contestation

Norms scholars have thus far assumed that rhetoric and behaviour will align; compliance and contestation is a relatively straightforward question. Risse and Sikkink's canonical theory of norm socialization sees states proceed along a relatively intuitive sequence of "tactical concessions," whereby states minimally comply discursively or materially, or directly challenge the norm's validity as a norm.¹ They theorize that these concessions force states into accepting the norm's internal validity, and will lead to the norm's incorporation into an actor's "standard operating procedures"; in other words, "states entangle themselves in a moral discourse which they cannot escape in the long run."² With states that contest the norm's internal validity, Risse and Sikkink argue that international acceptance of the norm generates social, material, and economic pressures that can shame, sanction, and otherwise persuade an antagonistic state to at least engage in tactical concessions to reduce the costs of contestation.³ Even the most reluctant states are induced to abide by and become socialized to the norm, and the norm eventually becomes a matter of everyday common sense.⁴ However, the theory presumes that a state's statements will generally align with their behaviour, and does not thoroughly question the possibility that moral discourse can form the entirety of a state's tactical concession.

Deitelhoff and Zimmermann's applicatory and justificatory contestation expands Risse and Sikkink's concept of tactical concessions by painting a more nuanced image of contestation and socialization beyond a binary equation. For example, American officials

¹ Thomas Risse and Kathryn Sikkink, "The socialization of international human rights norms into domestic practices: introduction," in *The Power of Human Rights: International Norms and Domestic Change* ed. Thomas Risse, Kathryn Sikkink, and Stephen Ropp. Cambridge: Cambridge University Press, 1999: 12-3.

² *Ibid.*, 16-17.

³ *Ibid.*, 14.

⁴ *Ibid.*, 16-17.

engaged in applicatory contestation after information surfaced about the US's program of extradition and black site detentions; by framing waterboarding as an alternative interrogation technique and not torture, the US could accept the norm against torture, but simultaneously contest it by carving out waterboarding as an exception.⁵ Risse and Sikkink foreshadow this possibility by writing that "actors might actually agree on the moral validity of the norm, but disagree whether certain behavior is covered by it."⁶ Justificatory contestation matches Risse and Sikkink's thoughts on moral contestation; states resist the entire premise and foundation of the norm, rather than the norm's application.⁷ These two theories are not mutually exclusive; applicatory contestation can bleed into justificatory contestation, as seen when other states used the case of American torture as precedent to conduct their own programs of torture.⁸

In examining R2P misapplications, Badesceu and Weiss discuss the possibility that successful application of a norm is not required for a norm to succeed, and that misapplication and breaches of a norm can clarify and strengthen the underlying norm by defining what the norm *is not*.⁹ Intuitively, their work argues that clear violations, whether defined as such through acclamation or negotiation, are necessary in order to more definitely separate cases of questionable compliance and overt non-compliance. Their work echoes Kratochwil and Ruggie's foundational finding that a norm violation does not necessarily mean a norm is invalid, but that any reference to a norm in the process of

⁵ Nicole Deitelhoff and Lisbeth Zimmermann, "Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms," *Peace Research Institute Frankfurt Working Papers* no. 18 (December 2013): 4-9. Averell Schmidt and Kathryn Sikkink, "Is the Norm Against Torture Dying?". Unpublished manuscript.

⁶ Risse and Sikkink, 13.

⁷ *Ibid.*

⁸ Schmidt and Sikkink.

⁹ Cristina Badesceu and Thomas Weiss, "Misrepresenting R2P and Advancing Norms: An Alternative Spiral?" *International Studies Perspectives* 11 (2010): 358-9.

violation acknowledges the principle's normative pull.¹⁰ An actor must make an intentional decision as to whether they are to comply, or violate an existing norm.

However, tactical maneuvering around norms is still limited to accepting the norms, leading to a thoroughly straightforward teleological narrative of norm socialization.

Acharya offers a different way of envisioning norms through his theories on subsidiarity and localization; localization sees a “foreign norm...[adapted and] imported for local usage only. In subsidiarity, local actors may export or “universalize” locally constructed norms,” the key difference being whether a domestic or foreign norm is intended to alter an existing norm, and the arena the hybridized norm is expected to impact.¹¹ While his work refutes the straightforward process of contestation and socialization that the other authors presume, Acharya's theory still maintains an element of good faith dealing. Actors do not negotiate and create norms with the intent of undermining the same norm they have built, or at least are seen as proponents of.

Bellamy moves away from this strand of thought by introducing another variable into the compliance equation by examining strategic motives for norm acceptance. In reexamining R2P, he creates a different narrative of coerced compliance by building off of the idea of tactical concessions to describe “mimicry” or “noninstrumental conformism”, where actors engage with a norm by

...adopt[ing] the norm's language while persisting with established patterns of behaviour. They are able to do so precisely because it is so difficult for other

¹⁰ Friedrich Kratochwil and John Gerard Ruggie, “International Organization: A State of the Art on an Art of the State,” *International Organization* 40, no. 4 (Autumn 1986): 768-9.

¹¹ Amitav Acharya, “Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule-Making in the Third World,” *International Studies Quarterly* 55 (2011): 97-8.

members of the society to determine whether or not they are acting in a manner consistent with the norm.¹²

This gap that Bellamy hints at between rhetoric, action, and intent is explored elsewhere, like in Lightfoot's "selective endorsement," where states define self determination and Indigenous rights in a way to create automatic compliance, and to limit the norm's force and precision.¹³ Viewing compliance through a more critical lens creates a possible gap for actor engagement with norms that cannot be fully viewed with an exclusively realist or constructivist lens. I explore this point by building an alternate idea of evasion and avoidance that interacts with existing literature.

Applying evasion and avoidance normatively

This gap in understanding normative compliance is a theoretical gap that intuitively makes sense, but theoretically has been left unaddressed by many thinkers in this area. The key point behind evasion and avoidance is that the norm itself is acknowledged as fact by the non-compliant actor. The norm's existence as well as the need to act *around* it, rather than by it, is incorporated into the actor's standard operating procedure because it is in their benefit to do so. Risse and Sikkink's spiral model would interpret evasion and avoidance as a step towards full socialization, though maintaining an aspect of tactical concession and instrumental compliance. However, the spiral model misses the possibility that evasion and avoidance can become the extent of an actor's compliance, since an

¹² Alex Bellamy, "The Responsibility to Protect: Five Years On," *Ethics and International Affairs* 24, no. 2 (Summer 2010): 166.

¹³ Sheryl Lightfoot, "Selective endorsement without intent to implement: indigenous rights and the Anglosphere," *The International Journal of Human Rights* 16, vol. 1 (2012): 102.

international regime might conflate partial compliance with eventual compliance and reduce pressure on a partially compliant state, or just simply cannot detect evasion or avoidance. Acharya includes in his theories of localization and subsidiarity theory a process of norm translation and implicit change to adapt a norm to local conditions, which complicates Risse and Sikkink's model of socialization while reinforcing the messy reality behind socialization: full socialization might be less common than assumed.¹⁴ In addition, while applicatory contestation and justificatory contestation may occur, it is not necessarily in the actor's interests to openly contest the norm. In fact, as I explore in the case study around doping, evasion and avoidance relies on a norm's existence, so that an actor can take advantage of what other actors are unable to do for moral or instrumental reasons.

Actors can generate compliance indicators by either complying with the norm's prescriptions, or by acting in a way that the norm did not envision in order to reap the benefits of appearing compliant while not complying. Evasion and avoidance describes the latter scenario. These two phenomena are defined by moral non-compliance, but they differ from other forms of non-compliance by separating intent and faith from action and discourse. Evasion is when information is deliberately manipulated in a way that explicitly breaches the rules of the game to generate indicators of norm compliance, such as evidence that nuclear refinement plants have shut down, even while the plants continue producing fissile material in the case of anti-nuclear proliferation norms. This can be differentiated from avoidance, where the rules of the game are adhered to in a way that defeats the norm's goal, such as in Price's study of the norm against anti-personnel mines, and subsequent US action to label certain forms of mines as submunitions in order to continue

¹⁴ Acharya, 97-9.

using them.¹⁵ At a foundational level, evasion cheats the system, while avoidance uses the system's loopholes to an actor's advantage.

Returning to the issue of good faith and intent, what these examples hint at is an actor's refusal to be bound by the principle of good faith. The presumed honesty of action and rhetoric in indicating an actor's true intent cannot be ever ascertained, and can only be arrived at by interpreting actions and signals generated through discourse, hearsay, action, and presumption. Other actors enforcing the norm may be initially suspicious of the validity of normatively compliant material and discourse coming from a previously bellicose actor, but in the absence of evidence to the contrary, would eventually take compliance as evidence of socialization. Pozen tries to define the basic essence of bad faith as an "actor's state of mind and, above all, to her honesty and sincerity," or "the fairness or reasonableness of her conduct, tested against the norms of a legally relevant community," but finds these definitions overly broad, which leaves open the question of what honesty or good faith is.¹⁶ However, Smith finds a potential operating mechanism for bad faith by describing opportunism:

Let me suggest that opportunism is behavior that is undesirable but that cannot be cost-effectively captured – defined, detected, and deterred – by explicit ex ante rulemaking. Opportunism is residual behavior that would be contracted away if ex ante transaction costs were lower. Not coincidentally, it often violates moral norms, which are incorporated into the ex post principles that deal with opportunism.¹⁷

¹⁵ Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization* 52, no. 3 (Summer 1998): 637.

¹⁶ David Pozen, "Constitutional Bad Faith," *Harvard Law Review* 129, issue 4 (February 2016): 892-4.

¹⁷ Henry Smith, "Equity as Second-Order Law: The Problem of Opportunism," *Harvard Public Law Working Paper*, no. 15-13 (January 15, 2015): 14.

Smith's opportunism offers a working definition of bad faith; bad faith can be when an actor's actions and discourse should have changed, but they knowingly carry out behaviours antithetical to the new regime they operate in. Importantly, he identifies a key point; opportunism takes advantage of loopholes in ex ante rules that were not closed when the rule was made, echoing foundational concerns about norm lags. Moving back to norms, discursive and material compliance is meant to indicate socialization to the norm, but when inserting opportunism into evasion and avoidance, we can define one important facet of the terms. While actors engaging in evasion and avoidance can acknowledge and parasitically thrive off the norm, their conduct does not internalize the norm's prescriptions, existence, and logic systems. These actors take into account the fact that a norm exists, and act strategically around the norm to try and avoid incurring penalties for ignoring the norm's prescriptions and internal logics. A fully socialized actor would accept the norm's presence, prescriptions, and logics, and instead of exploiting loopholes, approach loopholes with the norm's intent in mind.

However, this does not preclude an evader or avoider from participating and complying with the norm; I argue that strategic compliance can help an actor build a reputation as compliant, which can hide their non-compliance while even encouraging further norm compliance by other actors. The need for the violated norm to exist becomes more clear; if the norm and associated regime does not exist, then it cannot be taken advantage of to send a seemingly costly signal.

One other point is that evasion and avoidance are deliberate strategies meant to deliver an outcome contrary to the norm's goals and prescription. Building off of Chayes and Chayes' requirements for compliance, if an actor does not have the capacity to comply, their non-compliance falls outside the range of cases described by evasion and avoidance. Hawkins and Jacoby build off Chayes and Chayes to describe a subset of states staffed with a normatively socialized but under-resourced bureaucracy, which can only meet some of its normative commitments as a partially compliant state.¹⁸ As well, a state must be aware of the norm's intended effect and actively seek to undermine the norm's goals in order to meet the standard of deliberateness, which bad faith dealing implies, but does not explicitly name.

These points set the foundation for evasion and avoidance. The key difference between the two seems to be whether or not the actor in question steps outside the regime's procedural prescriptions in order to evade or avoid the regime's substantial prescriptions. With evasion, detection presumably leads to a clear cut finding of open non-compliance. With avoidance, however, the illegitimacy of the actor and action in question is less clear. An actor working on the penumbra of a norm will have the advantage that they have technically followed the rules, which can be a powerful message deployed to mitigate penalties if avoidance is detected.

The differentiation between the evasion and avoidance also depends greatly on what information an observer has of the action in question. Coming back to capacity and deliberateness, while an actor may argue that they are incapable of complying with, or

¹⁸ Darren Hawkins and Wade Jacoby, "Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights," *Journal of International Law and International Relations* 6, no. 1 (June 2010): 42.

unaware of the norm, this relies on the belief that the actor is transmitting their signals in good faith. Whether this is the case, but more importantly, whether the norm's proponents perceive this to be the case depends on available information. For example, if a taxpayer claims an inability to pay their outstanding taxes on the basis of bankruptcy, the tax agency would likely probe the taxpayer's claim, but would likely accept the evidence submitted by the claimant. This would not change even if the taxpayer had anonymous offshore assets, as long as the tax agency was unaware of these assets. Similarly, what appears to be avoidance could turn out to be evasion if additional information becomes available that indicates that avoidance was generated through manipulated inputs.

Finally, the issue of what is being manipulated in order to appear compliant, or to send normatively compliant signals should be examined. Avoidance plays on a norm's inability to cover every situation by looking for gaps in logic, and bridging the gaps between prescriptions and action with normatively antithetical logic, generating a non-intended result. The cover deployed by the actor is procedural; the actions meet the norm's procedural aspects, and can shelter under the ambiguity of imprecision. Though the actor risks detection because of their deviation from standard modes of operation, they can claim some level of output legitimacy through the non-manipulation of the input variables. Deitelhoff and Zimmerman's applicatory contestation retains a similar notion of manipulated imprecision; in applicatory contestation, imprecision is created, whereas in avoidance, imprecision already exists, and is leveraged for an actor's benefit.

Evasion differs in that the input to generate a normatively compliant signal is manipulated. In a sense, a norm's internal legitimacy is upheld, and even strengthened by

the successful addition of a normatively compliant case that adds to precedent. While the outcome is normatively compliant, the outcome's legitimacy ultimately is negated by the lack of input legitimacy for those aware of the evasion at play. Actors engaging in evasion hide among other normatively compliant cases, and cannot be as easily detected because their action, logic, and outcomes appear to align with the norm's goals. This form of non-compliance that does not necessarily seek to challenge the governing norm falls outside the standard findings of norms scholars; while in many cases, non-compliance is linked to contestation, evasion addresses cases where contestation and compliance are delinked.

In other words, evasion and avoidance try and highlight cases where a relational logic between an actor, their political and social environment, and a norm do not override the prevailing logics in play. Instead, actors rely on transactional logic when it is most advantageous, though this does not preclude compliance. Every action is calculated and measured, rather than habitual and instinctive. In the cases I explore, the deliberate chain of events and actions that I highlight is the key difference between sheer incompetence or ignorance, and evasion or avoidance.

We see this in the highly calculated doping regimen that Russian athletes underwent as they evaded detection by the international doping regime, but also in the deliberate acknowledgement that their actions constituted both a norm violation as well as a purposeful attempt to conceal the violation. Tax avoidance similarly is a strategic maneuvering around a regime's rules to participate in a polity without having to pay the full cost of participation. Finally, the carefully choreographed negotiation of recognizing

Indigenous rights by states paired with rhetorical hedges, material half-measures, and an ongoing history of sociopolitical conflict hint at the constant process of state mitigation of costs of compliance. Traditional compliance skews towards viewing the world in an overly optimistic sense, and assumes that partial compliance inevitably leads towards complete compliance. Evasion and avoidance takes a more Machiavellian sense towards compliance and norms; what happens if the indicators of compliance are only the tip of the iceberg?

Through the mouse hole: evasion in doping and sport

The norm against doping in sport has roots in the historical principle of fair play, but its institutionalized form and associated regime is a far more recent phenomena. The norm aims to ban all drug doping and treatments meant to provide athletes with an unfair advantage. WADA is the main institutional regime built up around this norm; in its Anti-Doping Code, it argues that:

Anti-doping programs seek to preserve what is intrinsically valuable about sport. This intrinsic value is often referred to as “the spirit of sport.” It is the essence of Olympism, the pursuit of human excellence through the dedicated perfection of each person’s natural talents. It is how we play true... The spirit of sport is...reflected in values we find in and through sport, including: ethics, fair play and honesty...respect for rules and laws...respect for self and other Participants...¹⁹

Of particular interest is how this norm speaks of fair play and ethics; what the norm would appear to govern would be substances and processes meant to unfairly boost performance, though this broad definition of doping arguably covers everything from anabolic steroids, to high intensity training centres and techniques that only some states can afford to have. Its subjectivity speaks to a recognition of Krasner’s lags, and seeks to proactively restrict new technological advancements before they arise.²⁰ However, a prohibitive norm cannot survive with high levels of subjectivity, as it would lack the

¹⁹ World Anti-Doping Agency, *World Anti-Doping Code*. 2015. 14.

²⁰ Stephen D. Krasner, “Regimes and the Limits of Realism: Regimes as Autonomous Variables,” *International Organization* 36, vol. 2 International Regimes (Spring 1982): 500-503.

specificity that authors like Abbott and Snidal identify as a key part of the equation that gives hard law, norms, and their prescriptions power.²¹

This is rectified by the tripartite structure of the norm; the UNESCO International Convention against Doping in Sport, the WADA World Anti-Doping Code, and the WADA Prohibited List. The UNESCO convention binds states to the norm of anti-doping, while the Anti-Doping code binds non-governmental organizations like NOCs or international federations, but goes beyond the strict essence of the norm by labelling any attempt to avoid the norm's prescriptions, enforcement mechanisms, and procedural aspects as an anti-doping rule violation.²² The prohibited list includes all substances that are specifically banned under the regime, but also includes treatments such as blood doping and gene manipulation. While there is subjectivity in the norm during negotiation by an international expert community of which substances and treatments are to be considered banned, the clarity of the list combined with defining any prescriptive avoidance as a norm violation reinforces the regime's structural cohesion and specificity.

While the norm covers import and export of certain substances, funding, institutional mechanisms, and laboratory certification and standardization, the main tool of the norm is testing. Testing is done during competition to detect drug or treatment use contrary to the rules, but also out of competition to detect substances like anabolic steroids that "wash out," or cannot be detected after a certain period of time but will still have a performance-enhancing effect.²³

²¹ Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3, (Legalization and World Politics, Summer 2000): 423.

²² *World Anti-Doping Code*, 18-24. *International Convention against Doping in Sport*. United Nations Educational, Scientific and Cultural Organization, 2005. s. 2-3.

²³ World Anti-Doping Agency. "Whereabouts." Accessed April 11, 2016. <http://www.wada-ama.org/en/questions-answers/whereabouts>

Doping tests are announced by surprise, and notifications are not to be given of testing. These tests are ordered by WADA, major event organizers (i.e. IOC, IPC, major championships), international federations (i.e. IAAF), NOCs/NPCs, or national sport federations (i.e. ARAF). These tests in turn are administered and given by a NADO, but may also be administered by third party organizations that specialize in administering these tests. Finally, once samples are collected by the NADO, WADA, anti-doping agency, or third party organization, they are delivered to a WADA accredited lab for analysis, and for results reporting. Results are then uploaded into ADAMS to provide information on whether an athlete has a history of non-assisted or assisted competition, normal levels of naturally occurring but banned synthesizable hormones or chemicals in their bodies (i.e. testosterone), and to identify patterns in report data.

This outline of the norm's institutions, rules, and mechanisms paints a general picture of the overall regime that contextualizes how Russian athletics organizations, the IAAF, the Russian NADO, individual coaches and athletes, and possibly the state engaged in systematized patterns of doping prior to the London Olympics, during the Sochi Olympics, and in the lead up to the Rio Olympics. While establishing evasion would require a smoking gun, limitations on access to information and sources limit my ability to definitively establish that Russian doping is a case of evasion entirely. Circumstantial evidence from one main source, as well as media reports using the same main source can indicate the possibility that an actor, or in this case, actors have engaged in normative evasion. However, without more extensive interviews with actors, access to documents, and sample data, the best case that we can establish is that actors in my case study *most likely* engaged

in norm evasion. As I cautioned earlier, avoidance can become evasion ex post facto, but this requires access to information that might not be necessarily accessible. This case is no different; we can highlight cases of avoidance, which when combined with reports that suggest that avoidance may still be only a screen, suggests evasion.

The spotlight became trained on Russia after a German television channel broadcast a documentary alleging that structures within the Russian sporting system allowed Russian athletes to cheat the doping regime. The documentary interviewed past Russian athletes, coaches, and officials, and painted a picture of a highly organized and clandestine doping program.²⁴ Allegations against Russian actors generally fell into the following categories:

- 1) Russian athletes doped, or attempted to dope;²⁵
- 2) Russian coaches aided in doping by a variety of means, including sourcing drugs with short washout periods;²⁶
- 3) The ARAF, the Russian NADO, possibly state officials and agencies, and the Moscow WADA accredited lab engaged in organizing doping regimes, bribing officials to bury positive drug tests, establishing security arrangements where certain athletes were not tested or were guaranteed negative tests;²⁷
- 4) Various actors hid positive test results through a variety of mechanisms;²⁸
- 5) Test samples and data uploaded into ADAMS were tampered with, or attempts were made to tamper with samples.²⁹

²⁴ *The Independent Commission Report 1: Final Report*. World Anti-Doping Agency. 2015. 1-2, 49.

²⁵ *Ibid.*, 107, 115

²⁶ *Ibid.*, 50-51, 143

²⁷ *Ibid.*, 134-40, 141-6

²⁸ *Ibid.*, 111-2, 107

²⁹ *Ibid.*, 103

After the documentary was broadcast, WADA commissioned a series of investigations to examine the documentary's claims in depth. The reports detail a range of cases and maneuvers that were understood as deliberate attempts to evade the norm. For example, the report discusses a series of private conversations that former Russian athletics star Yuliya Stepanova had with senior Russian athletics coach Vladimir Kazarin, in which they discussed firstly the effectiveness of new testing mechanisms and the athlete biological profile in ADAMS, but then discuss how her doping program would be paused so that she would pass upcoming drug tests.³⁰ While we could understand this as an example where the norm worked to prevent doping, evidence to the contrary is found when Kazarin and Stepanova discuss the possibility of Stepanova returning to competition while undergoing a doping program, though Kazarin noted that it would be difficult for her to compete given the attention at the time WADA placed on Russian athletics.³¹ A later conversation before Stepanova returned to competition with Kazarin touched on the dangers of doping with coaches inexperienced with washout periods, but also led to Kazarin prescribing Stepanova oxandrolone, a drug which promotes muscle growth.

KAZARIN: You'll start taking them, let's say starting about Wednesday. What date will that be? Today is the 10th. So it will be the 12th.

STEPANOVA: Until the 22?

KAZARIN: Yes, until the 22. One pill contains 1mg. and then, until [inaudible] shouldn't do anything. So that is 40-45 days to get clean. That is, if you finish on the 22, then around the beginning of January or so, you should already be nice and clean. So, in theory, you can actually even do 15 days...Let's check the calendar...If it's

³⁰ Ibid., 149.

³¹ Ibid., 150

15 days, then until the 27th. That means 3 days here. The 31st, 34th and 10 more days... So, after January 10 you can pass.

STEPANOVA: The main thing...is to make sure I do a doping check before the 28th....What about [drugs] detectable for 20 days? Do we have any of those left?

KAZARIN: Of course, not. Now, Primabolan has the shortest time, at about 30-35 days. 20 days, really! What are you thinking? Science keeps moving ahead.³²

Stepanova and Kazarin's case is one of many in the report, but I focus on this one because of its direct link to evasion. The norm against doping exists, and it has pull, but in this case, Stepanova and Kazarin, presumably backed by a battery of support staff in the ARAF, have found ways to appear to adhere to the norm, and reap the benefits of competing clean, namely international recognition and sanction to race. However, this is achieved by stepping around the norm's compliance indicators while breaching the norm itself, falling cleanly within the bounds of evasion. The conversation makes it clear that Stepanova being able to dope and test clean was a deliberate choice; this was not by chance.

Further connecting this case to evasion, we would have classified the clean test resulting from the timing of drug washout periods as an example of compliance, had this report not been available. Given Stepanova's previous sanctions for testing positive at races, her test results would likely be watched more carefully, and any result indicating doping would further tarnish her reputation and impact her ability to race.³³ However, a clean test result would be encouraging to norm proponents, as a previously non-compliant actor found to be normatively compliant would be evidence that the norm was effective

³² Ibid., 151-4.

³³ Ibid., 130.

and had normative pull. In this case, the clean test was made possible by deliberate manipulation and tactical compliance backed with a deliberate intent to evade the norm later, as seen with the period of strategic compliance Kazarin engineered.

Another case detailed how Russian coach Aleksey Melnikov and IAAF anti-doping director Gabriel Dollé received 450 000 Euros from Russian runner Liliya Shobukhova in order to remove her from a IAAF/WADA list of athletes suspected of doping. Her removal from the suspected athletes list permitted her to race at a number of marathons as well as the London Olympics.³⁴ Dollé and Lamine Diack, the IAAF president then delayed the investigation into Shobukhova's case even after anti-doping personnel raised concerns about procedural irregularities in having Shobukhova's name removed from the list, and the investigation into her original adverse analytical finding postponed. Her status as a clean competitor, aided by delays in the IAAF investigation, allowed her to race at the London Olympics and the Chicago Marathon. However, the attempt to bury her case failed, and two years after Shobukhova would have normally faced a disciplinary hearing and temporary ban, the IAAF received a form accepting sanction for the original anti-doping rule violation that led to her inclusion on the list, which also served as an admission of guilt.³⁵ Shobukhova stated that her signature was forged on the form, and refuted the legitimacy of the IAAF form; it is notable that the IAAF received the form after a constant escalation of pressure from IAAF legal counsel on Dollé and Diack's personal lawyer regarding unreasonable delays and questionable testing and procedures in Shobukhova's case.³⁶ Once Shobukhova's sanction took effect, 300 000 Euros was refunded to her bank account from a

³⁴ *The Independent Commission Report 2*. World Anti-Doping Agency. 2016. 23-24.

³⁵ *Ibid.*, 25-6.

³⁶ *Ibid.*, 25-6.

Singaporean business called “Black Tidings,” run by a close associate of Diack’s son.³⁷ To further complicate matters, Diack’s son was also an IAAF vice-president.

While the IAAF and WADA proceeded on the likely assumption that Shobukhova was doping, the report is not entirely clear as to whether a test was conducted to definitively establish that she was doping, although given Stepanova’s case, clean tests may not carry the same weight as they did. I proceed along WADA’s assumption that Shobukhova’s training regimen likely involved doping, given the larger body of evidence that suggests that a viable system to circumvent the doping regime and tests existed, and that athletes that were participating in the program were occasionally caught, but could not be definitively found to be doping at first.

Setting aside the questionable chain of logic that led to refunding an extortion through a Singaporean bank account registered under “Black Tidings,” this case highlights a case of potential evasion. In this case, the benefits of competing without doping at the London Olympics has been attained by appearing code compliant, while likely racing with the benefit of prohibited substances and treatments. Evasion requires that the outcome is normatively compliant, but that the inputs be manipulated to create a certain outcome; in this case, Shobukhova was able to race as a clean athlete while benefitting from the performance enhancing effects of banned substances. This outcome was possible only through a deliberate attempt to bury her case under questionable blood work that initially exonerated her, but was detected by IAAF investigators while looking into delays in the case.

³⁷ Ibid., 28-31.

It does not matter that Shobukhova was ultimately sanctioned, as it would appear that her sanction was a strategic maneuver to relieve pressure on individuals within the IAAF. What Shobukhova's case highlights is the potential for occasional compliance by non-compliant actors, in the same way as Stepanova complied with the anti-doping regime for a time. For there to be benefits from the system, there must be a system that exists. For the system to exist, there must be compliance; what evasion does is take advantage of the assumption that compliant actors will act in good faith in relation to the norm in order to generate maximum benefit for the actor.

While evasion involves non-compliance, the most important factor is whether the actor is *viewed* as fully compliant. Given that norms can be violated without necessarily being contested, Russian president Vladimir Putin's immediate response would have been understood as an emphatic stand for anti-doping. He stated shortly after the documentary aired that the allegations required an "increase in the work efficiency of our [Russian] anti-doping services, but on the other, it speaks for the necessity to step up preventive efforts in this sphere."³⁸ While we could take this at face value and as evidence of Russian support for the norm, later comments by Russian sport minister Vitaly Mutko's calls for officials to be arrested or fined if they publish names of athletes who fail drug testing raise questions about whether even public discourse has been co-opted into the process of evading the norm of anti-doping.³⁹ A head of state delivering a non-conditional statement against doping in sport sends a strong signal that a state is committed to a particular

³⁸ *The Independent Commission Report 1*, 58.

³⁹ Associated Press, "Russia's sports minister calls for doping leaks to be criminalized," *CBC News*. March 26, 2016. Accessed April 12, 2016. <http://www.cbc.ca/sports/olympics/generic/russian-doping-mutko-criminalized-1.3508147>

position, but re-examining Putin's statement with evasion and Mutko's statement in mind challenges whether the signal is trustworthy.

At this point, I note Lynch's definition of hypocrisy; he argues that actors can play "a distinctive 'hypocrisy' game, using moral rhetoric, and demands that others live up to their own moral rhetoric, for strategic advantage."⁴⁰ If the global regime prohibiting doping in sport did not exist, then the pareto optimal solution, if the goal of sport is to set new records, would be to dope. However, the existence of the regime prohibits doping; it would be in an actor's interest to be understood to support the norm against doping, while clandestinely engaging in doping in order to take advantage of norm compliance and the fact that most other actors are not doping. Putting Smith's opportunism and Lynch's hypocrisy together creates the possibility of material and discursive hypocrisy; Lynch's game requires that one actor have information that another is not privy to, and use the imbalance in knowledge to their own advantage. Smith's opportunism lacks this imbalance in knowledge that Lynch identifies, but which is critical to my definition of evasion and avoidance.

While the two initial Independent Reports fed news cycles for months, the third Independent Report (the McLaren Report) and an interview given by former Moscow WADA laboratory director Grigory Rodchenkov revealed more details on the measures that Russian officials took to ensure that Russian athletes could dope and test clean, especially at the Sochi Olympics. While in past Olympics, Russia sent athletes that had stopped doping ahead of time, given limitations on alter records inside international laboratories,

⁴⁰ Marc Lynch, "Lie to me: sanctions on Iraq" in *Moral Limit and Possibility in World Politics* ed. Richard Price. Cambridge: Cambridge University Press, 2008, 170.

Rodchenkov's interview and the McLaren Report showed how testing integrity in Sochi was compromised in entirely novel ways. Rodchenkov stated in his interview with the New York Times that he had developed a cocktail of drugs that would wash out quickly, and a process the Sochi lab had enabled "people [to celebrate] Olympic champion winners, but we are sitting crazy and replacing their urine," through a clandestine operation involving the FSB.

The McLaren Report corroborated Rodchenkov's interview, and further backed it up with an investigation of what McLaren called the "sample swapping methodology" that was developed for the Sochi Olympics and laboratory. Previously, in the Moscow laboratory, evasion could occur because the Russian state could interfere directly with the testing process. Samples received were screened to detect if any were likely to produce an adverse finding, indicating a case of doping. From there, the laboratory would contact a liaison that worked under the blessing of the Russian Ministry of Sport, who would advise whether the sample was either to be "saved" or "quarantined." Saving a sample meant halting further examination and recording a negative result in ADAMS, while quarantining a sample meant that the full test would be carried out and the result put into ADAMS.⁴¹ Given international observers in Sochi, this was not possible, as testing could not be halted halfway to contact a mysterious figure that would reply with one word responses without eliciting some measure of concern and alarm.

For Sochi, an extra step in the sample swapping methodology was taken to allow Russian officials to tamper with urine samples, which involved the unlikely combination of breaking open previously untamperable testing vessels, a mouse hole, the FSB, and table

⁴¹ *The Independent Person Report*. World Anti-Doping Agency. 2016. 32-35. (McLaren Report)

salt. Samples were collected in specially designed glass containers that were thought to be secure, and could not be opened without obvious signs; however, in the year preceding the Olympics, the FSB collected hundreds of the test sample bottles as well as the locking rings that secured the bottles, likely to determine how to open the bottles without visible signs.⁴²

After samples were collected at venues, they were shipped to the Sochi WADA laboratory, where they were stored for testing. However, the FSB influenced the building's design, and put in an office outside the secure internal perimeter of the laboratory area, but on the other side of the storage room's wall.⁴³ Athletes who had provided samples and were under the protection of the Russian state would have their samples flagged, and under the cover of night, their samples would be passed by lab technicians through a small 'mouse hole' drilled between the wall of the laboratory into the FSB office to Rodchenkov, who would then pass the sealed bottle to a FSB agent that would take them away elsewhere to be unsealed. Samples were then dumped out, and replaced by clean urine. Urine's specific gravity, measuring the weight of dissolved solids in the sample, differs from sample to sample, and to ensure that the previously collected clean urine would match the dirty urine's specific gravity, water or table salt was mixed in. The bottles were then sealed, and passed back through the mouse hole for testing.⁴⁴ Invariably, the doctored samples passed inspection.

In this case, though more information likely will come through over the following months, evasion has been thoroughly detected by the regime, and brought to light. The

⁴² Rebecca R. Ruiz and Michael Schwartz, "Russian Insider Says State-Run Doping Fueled Olympic Gold," *New York Times*. May 12, 2016. Accessed July 31, 2016. http://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics-2014.html?_r=0

⁴³ *McLaren Report*, 63-4, 68.

⁴⁴ *McLaren Report*, 65-72.

benefits of further evasion in the regime is limited; though the IOC declined to ban all Russian participation in the Rio Olympics, a reverse onus of proof and deep suspicion of Russian athletes takes away the element of good faith that was exploited to allow Russian athletes to race while benefitting from the effects of banned substances. Procedural irregularities likely would be regarded less as errors, and more as attempts at opportunistic behaviour.⁴⁵ However, this assumes that other methods of manipulation have been detected; if an actor participating in the regime is not socialized into a norm's logics, that actor can be expected to constantly search for different or undetectable ways to circumvent the norm's goals to reap the benefits of somewhat complying. Given the mountain of evidence surrounding manipulated tests, observers would likely do well by keeping an equally large mountain of salt at hand while examining compliance signals.

⁴⁵ International Olympic Committee. "Statement of the Executive Board of the International Olympic Committee on the WADA Independent Person Report," July 19, 2016. Accessed July 25, 2016. <https://www.olympic.org/news/statement-of-the-executive-board-of-the-international-olympic-committee-on-the-wada-independent-person-report>

Differentiating avoidance in taxation

In a meeting filmed with hidden cameras, Garbutt said his role as a tax lawyer is to be the “most devious underhanded son of a bitch in the room and that’s what you’re paying me for.”⁴⁶

I begin by exploring existing definitions and ideas on evasion and avoidance from the viewpoint of taxation. A policy paper discussing the impact of profit shifting notes that “it is well established that the obligation to pay tax is imposed by law and that there is no obligation on any taxpayer to pay more tax than the law requires... a taxpayer is entitled to arrange its affairs to minimize the amount of tax payable,” citing a British tax law case.⁴⁷ The Canada Revenue Agency builds on this by differentiating tax minimization strategies; tax planning is regarded as legitimate “within the intent of the law,” whereas avoidance is tax minimization by meeting the specific wording of the law but “violate[s] the spirit and intent of the law.”⁴⁸

We can turn to the case of Canadian real estate pricing, specifically British Columbia’s additional tax for foreign owners of property in Metro Vancouver as an example of where avoidance was legal, but socially problematic. British Columbia implemented a new property transfer tax in August 2016, aimed at controlling housing costs that the government had linked to foreign buyers constantly buying and selling property in the Vancouver market. Within a day or two of the announcement of the tax, a Vancouver

⁴⁶ Timothy Sawa, “Tax avoidance: Canada-Barbados tax deal loopholes revealed,” *CBC News*. October 7, 2013. Accessed April 11, 2016. <http://www.cbc.ca/news/canada/tax-avoidance-canada-barbados-tax-deal-loopholes-revealed-1.1913228>

⁴⁷ Brian Arnold and James Wilson, “Aggressive International Tax Planning by Multinational Corporations: the Canadian Context and Possible Responses,” *SPP Research Papers* 7, issue 29 (September 2014): 13.

⁴⁸ Canada Revenue Agency. “Tax Avoidance,” December 23, 2013. Accessed April 7, 2016. <http://www.cra-arc.gc.ca/gncy/lrt/vvw-eng.html>

realtor sent out an email pointing out that non-Canadian buyers that signed pre-sale contracts could sell their future condo at a profit while legally not having to incur the 15% tax.⁴⁹

While avoidance manipulates legitimate ways to understand the law to create a non-compliant event, evasion “deliberately ignor[es] a specific part of the law.”⁵⁰ However, this broad definition requires fine tuning, as it collapses all possible permutations of non-compliance together. A finer definition is found in the *Income Tax Act*, and though evasion is still not specifically defined, associated mechanisms *of* evasion are identified.

239 (1) Every person who has

- (a) made, or participated in, assented to or acquiesced in the making of, *false or deceptive statements* in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,
- (b) to *evade payment* of a tax imposed by this Act, *destroyed, altered, mutilated, secreted or otherwise disposed of the records or books* of account of a taxpayer,
- (c) *made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission,* to enter a material particular, in records or books of account of a taxpayer,
- (d) *wilfully, in any manner, evaded or attempted to evade compliance* with this Act or payment of taxes imposed by this Act...is guilty of an offence...[emphasis added]⁵¹

This law differentiates evasion with other forms of non-payment or underpayment, but the differentiation would appear to be assisting in record manipulation, evading

⁴⁹ Jane Armstrong, “Vancouver realtor probed for 'how-to' email on avoiding new property transfer tax,” *CBC News*. August 5, 2016. Accessed August 5, 2016. <http://www.cbc.ca/news/canada/british-columbia/real-estate-council-investigation-realtor-1.3697962>

⁵⁰ Canada Revenue Agency. “Tax Avoidance”.

⁵¹ *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)) s. 239 (1)

payment, or otherwise act outside of the bounds of the law. Importantly, though a truism, this law applies to specific individuals: those that choose to participate in a particular political and economic community. With norms, the voluntary variable of citizenship or being able to choose to conduct business in a certain political community is, to some degree, still present. For example, states assent to treaties, or choose to adhere to declarations or conventions to reap the benefits of norm compliance, whether it be avoiding shame, sending athletes to compete in a doping-free environment, or ensuring state income flows are not undercut by tax underpayment. Another facet of the discussion is that the taxpayer understands they have an obligation to pay tax, but instead of paying tax or their full tax burden, actively chooses to reduce their tax burden in a way that appears compliant. This non-challenge to the law's internal validity challenges scholarship on norm non-compliance; there is no attempt to overthrow the system.

Recalling Kratochwil and Ruggie's point, the lack of open contestation indicates that normative pull exists, generated by state sanction through a combination of fines and/or imprisonment. This would indicate that the benefits of political participation outweigh open contestation of the norm, but not enough to justify complete compliance with the norm. It is in this grey area in a binary understanding of compliance that evasion and avoidance fit in.

In the early months of 2016, the Panama Papers captured the media cycle, with pundits, commentators, journalists, academics, and anyone with a passing interest in the matter weighing in on the possible repercussions coming from the document release. The Panama Papers are comprised of approximately 11.5 million documents from Panamanian

law firm Mossack Fonseca covering a 40 year period, detailing offshore company structures and funding mechanisms and legal arrangements relating to legal and proxy representation, which can be used both nefariously but also legitimately.⁵² While it may be politically popular to call the released information tax evasion (and while some cases may indeed be tax evasion), it may be more accurate to examine and describe the case as one of tax avoidance. Recent years have seen similar cases across the world; for example, international firms based in the UK were “tax shamed” for transferring funds overseas to avoid having to pay as much tax.⁵³ The important point to note is that corporations were “shamed,” but not necessarily penalized because of their construction of their tax obligations.

Tax avoidance by transferring funds and assets to offshore businesses can be constructed as avoidance in that it is legal, at the moment, to do so. There are laws that restrict transnational capital flows, but as Arnold and Wilson argue in the same vein as Krasner, the lag between a norm (in this case, partially encoded in domestic and international law) and on the ground realities can be exploited. The quote I used to begin this section, as well as opportunism play a large role in avoidance; actors look for gaps in logic, and exploit them to their benefit. It is not illegal to transfer funds overseas. Actors exploit transnational capital flows from areas of higher tax to lower tax to avoid higher rates of tax.

⁵² This source is linked to the The International Consortium of Investigative Journalists, which is the group at the centre of releasing the Panama Papers. Frederik Obermaier, Bastian Obermayer, Vanessa Wormer and Wolfgang Jaschensky, “About the Panama Papers,” *Süddeutsche Zeitung*. Accessed April 13, 2016. <http://panamapapers.sueddeutsche.de/articles/56febf0a1bb8d3c3495adf4/>.

⁵³ Vanessa Barford and Gerry Holt, “Google, Amazon, Starbucks: The rise of ‘tax shaming’,” *BBC News*. May 21, 2013. Accessed April 13, 2016. <http://www.bbc.com/news/magazine-20560359>

In the Canadian context, we can differentiate this from evasion by looking at personal income taxes. A Canadian citizen holding shares in a hypothetical overseas company could see the value of their shares appreciate, but unless they receive income from the company, or sell their shares, they do not incur any Canadian tax. It would be difficult for funds held overseas to benefit a Canadian owner without paying out capital, but, for example, shares in the company could be exchanged for a nominal price for other assets of value in an alternative or pseudo-market; this is not necessarily evasion in and by itself. Assuming that there are no other laws on asset transfers being taxed, the actor in question technically has complied with the regime's prescriptions, but has morally circumvented the regime's objectives.

There is a fine balance between avoidance and evasion. Evasion would require deliberately falsifying income tax or domestic commercial tax returns; avoidance requires only creative accounting and a willingness to counter-logically think through problems. However, moves to collapse loopholes and assume bad faith in all cases of possible avoidance, such as in the anti-doping norm could more effectively reinforce norm compliance, even if tactical and strategic. While I argue that indicators for socialization can be co-opted by deliberately acting in bad faith, I would maintain that ultimately, constant compliant discourse and action can force actors from evasion and avoidance and towards a fuller socialization. For example, in the Russian case studies, Stepanova engaged in a period of tactical non-doping due to the inability of Russian evaders to get around the norm. Constant vigilance in enforcing the norm, and addressing possible norm vulnerabilities

could lead to a habitualization of modes of conduct, and, ultimately, incorporate the norm into the actor's standard operating procedures.

Settling in (a new equilibrium): UNDRIP and avoidance

While I have approached norms so far as a positive force that should be upheld as is, this position assumes that norms speak a universal truth. Assuming norms should remain perfectly stable is problematic; for one, there is the self-evident problem in having absolute rules throughout history. The lags that Krasner identified as problematic would be only intensified under the pressures of constants; norms must change, or risk obsolescence and norm death. Secondly, it assumes the inherent righteousness, justness, universality, accuracy, and logic of the norm's content itself, which is not always a given. With doping and tax evasion, a general case can be made that the norms surrounding these regimes conform to what is socially accepted as "good" while these could be seen as softer cases where you can expect to find broad support for the underlying norm in general, there can still be debate. For example, is tax evasion moral if it's supporting a corrupt regime? Or is it more correct to ignore the regime's tax system in favour of an alternate economic system? In the two cases above, there is an inherent understanding by the agents involved in evasion and avoidance that their actions are, on the whole, bad; hinting at this is the need to justify their action, or an emotional linkage of their action to shame.

With tax evasion and doping, I examined global prohibitive regimes that spoke to generally accepted actions and reactions; elimination of evasion to ensure services can be provided, and prohibiting doping to ensure that athletes perform without the use of particular techniques and substances as determined by the regime's epistemic community. In a way, prohibitive regimes can be simpler than a prescriptive regime; a prohibitive regime requires that an action end without necessarily requiring a substitute action,

whereas a prescriptive regime requires the creation of a new system of logics, institutions, and actions.

By turning to the case of Indigenous rights regimes in Canada, I nuance my argument by suggesting an equally valid, but alternate way of envisioning evasion and avoidance. Rather than collapsing all forms of evasion and avoidance under the general banner of negativity and an overall nihilism that potentially skews towards anarchy, I suggest that norm change is likely to find a genesis in evasion and avoidance. In this sense, evasion and avoidance serve a crucial role in the life cycle of a norm; these phenomena let actors test the waters for potential norm change without incurring the full cost of norm violation. This in turn can lead to a resolution to partially compliant behaviour, either through a strengthening of the underlying norm as written, modifying the norm to classify evasive or avoidant behaviour as compliant, or a gradual norm death.

With this case study, I also introduce another observation about avoidance, in that they can affect norms at every stage of the cycle, whether it be emergence, growth, fully implemented, contestation, and death. Indigenous rights norms are still in the process of development and growth; their codification and recognition as global norms have been achieved already in the UN, but what this means in practice is still a matter of debate. Negotiating the on-the-ground effects of what Indigenous rights entail will be subject to debate for the foreseeable future.

Turning to the experience of Indigenous peoples across the world complicates a narrative of evasion and avoidance as phenomena to be stamped out completely. These phenomena, while problematic for norm proponents, serve a crucial socialization aspect, in

that the actor in question evading or avoiding a normative regime recognizes their non-compliance with the norm, and must make a decision as to how they are to participate in their social realms. Actors must actively make a decision to not be fully compliant with the norm. However, it would not be entirely correct to say that evasion and avoidance are entirely antithetical to compliance; actors, I argue, ultimately modify parts of their behaviour to gain the benefits of compliance through partial compliance.

Hawkins and Jacoby examine human rights courts, and state partial compliance with their judgements, grouping them into four main methods of resistance; split decisions (compliance with some parts, but not all of the judgement), state substitution (compliance with the spirit, but not the letter of the law), slow motion compliance (delay), and ambiguous compliance amid complexity (particularly intricate task that makes it difficult to determine compliance).⁵⁴ The partial modifications may, if backed by external or internal pressures, force a partially compliant actor from a position of opportunistic avoidance and evasion into proceeding along the spiral model. However, where my case study differs is in that while Hawkins and Jacoby assume the integrity of the overarching definitions that govern the norms, and that there is an arbiter that can define compliance, the case of UNDRIP implementation is one where avoidance is a case of complying with the letter, but not the spirit of a norm, taking advantage of the subjectivity of a norm's ethos. Avoidance looks for the loopholes in the letter of the regime and substitutes in a different spirit, which is an inversion of Hawkins and Jacoby's state substitution theory.

I apply avoidance to Canadian statements surrounding UNDRIP implementation and support, and Indigenous self-determination in general to make a case that avoidance can

⁵⁴ Hawkins and Jacoby, 77-83.

moderate behaviour and bring actors closer to the norm's standards. While Indigenous peoples across the world have broadly been subject to varying levels of discrimination, removal, and nullification, I focus on the experience of Indigenous peoples in Canada to contextualize my example that avoidance may also serve a constructive and dialogical purpose.

Indigenous experiences in Canada vary, but most generally are characterized by some measure of resilience, violence, survival, and annihilation on the part of various actors. At the core of the conflict is the question of land, and who has access to, control of, and ownership of it. Large portions of Canada are settled without negotiation or permission of Indigenous peoples and nations, and the legitimacy of treaties in areas that are covered by them are questionable. Authorizing this multi-century process of colonialism is a series of papal bulls, which sanctioned North American exploration and granted lands to their European finders on the condition that Indigenous peoples on those lands would be converted to Christianity. Settler colonialism, in addition to expanding empire, served as a means of extracting and transporting resources from undeveloped to developed areas in service of a Lockean economic logic.⁵⁵ Land was a crucial source of physical and economic growth; Indigenous peoples in the way were obstacles to be overcome, and neutralized physically and culturally to allow growth continue unabated.

Historically, the most egregious examples of exclusion are generally south of the border, but Canadian policies were equally destructive. Residential schools removed youth from Indigenous communities and reshaped them into workers within and for the settler

⁵⁵ Barbara Arneil, "Trade, Plantations, and Property: John Locke and the Economic Defense of Colonialism," *Journal of the History of Ideas* 55, no. 4 (October 1994): 597-601.

colonial state.⁵⁶ Beatings, violence, and social repression in schools ensured that Canadian treatment of Indigenous peoples were equally heinous as that found south of the border.⁵⁷ Indigenous peoples were dehumanized and seen as “experimental materials” and “laboratories” when testing nutritional theories.⁵⁸ Experiments followed strict guidelines; in one case, investigators provided 8 ounce servings of milk for two years to control for differences in health, knowing that child subjects would suffer from riboflavin deficiencies during the control period.⁵⁹ In another case, vitamin C’s impact on dental health was tested by providing child subjects ascorbic acid or placebos; all children being tested on were denied dental treatments to ensure result integrity.⁶⁰

While the Canadian state still continues policies and logics that exclude Indigenous participation in or outside of the state and restricts Indigenous agency, the overt racism and oppression of the previous centuries has been moderated to take more discreet forms. For example, Borrows argues that constitutional recognition of Indigenous culture and rights based purely on contact or pre-contact practices differs with a living tree interpretation of rights that the Canadian constitution offers to other citizens, and leads to systematic under-privileging of Indigenous peoples that choose to maintain certain parts of their culture.⁶¹ The gradual moderation of racist action maps onto the active lobbying and

⁵⁶ *The Rabbit-Proof Fence* explores the (fictionalized) experience of a trio of young Jigalong girls, born to a European father and Jigalong mother, removed from their home, and put into residential school. It also highlights horizontal violence in the colonial project; the tracker sent to re-capture the girls was forced into his job to maintain a connection with his daughter, who was also in the school.

⁵⁷ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, 2015. 41-7. (TRC Executive Summary)

⁵⁸ Ian Mosby, “Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942–1952,” *Histoire Social/Social History* 46, no. 91 (May 2013): 148

⁵⁹ *Ibid.*, 161.

⁶⁰ *Ibid.*, 162-3.

⁶¹ John Borrows, “(Ab)Originalism and Canada’s Constitution,” *Supreme Court Law Review* 58, (2012): 358, 361-2.

direct action by Indigenous peoples to resist state assimilation and fight for rights, recognition, land, and material shifts in their day to day lives.

Though Canada has progressively shifted to recognize the colonial project's historical harms to Indigenous peoples, the problem of land and ongoing harm caused by settlement remains at the heart of the problem. Lightfoot's distinguishment between "soft rights," and more politically charged "hard rights," such as land or levels of self-governance rights speaks to Canada's strategy of avoiding the full brunt of the norm surrounding adoption and compliance with UNDRIP.⁶² In discussing a number of Anglo-descendent settler states, she argues that "overcompliance" with soft rights is an effort to avoid opening up questions on hard rights that impact the political and territorial structure of the state, and to protect their image as proponents of human (including Indigenous) rights. Partial compliance with low-cost provisions of UNDRIP paired with opportunistic silences on questions of territory and land ensure that states can enjoy the benefits of compliance, even when violating the norm's spirit. Though there are similarities in this example to Hawkins and Jacoby's split decisions, key to the issue is awareness of what Canada's obligations are in relation to UNDRIP. Hawkins and Jacoby presume that there is an actor requiring uniform application of the judgement; this case sees the most powerful actor in play purposely silencing part of the variables that constitute complete socialization and compliance in a technically allowable way.

Canadian opposition to UNDRIP began in the drafting refinement phase, with an Indigenous rights activist describing the Canadian/American/Australian/New Zealand

⁶² Sheryl Lightfoot, "Emerging International Rights Norms and 'over-compliance' in New Zealand and Canada," *Political Science* 62, no. 1 (2010): 104.

block's tactics as "creatively using language to obscure rather than resolve some of the underlying issues" as negotiating states sought to construct the declaration.⁶³ Importantly, during negotiations of the draft declaration, Lightfoot describes Canada as one of a few states (joining the US and Brazil) in requesting clarification on articles surrounding questions of land, resources, treaties, and voicing concern (the US expressed opposition) regarding the right of self-determination.⁶⁴

The draft declaration eventually moved on to debate and review by the UN General Assembly, where the final draft was approved with a vote of 143 for, 11 abstentions, and 4 against (Canada, US, Australia, and New Zealand were in the minority voting against). Canada at the time declared that the declaration's provisions were "overly broad, unclear, and capable of a wide variety of interpretations, discounting the need to recognize a range of rights over land and possibly putting into question matters that have been settled by treaty," setting up a curious position where it seemed that Canada found UNDRIP substantively lacking in terms of land rights, though the Canadian state's policies towards Indigenous peoples were generally reactive to imposed court judgements, rather than proactive.⁶⁵

In 2010, Canada declared that its qualms about UNDRIP had been resolved, and that "the Declaration is an aspirational document which speaks to the individual and collective rights of Indigenous peoples, taking into account their specific cultural, social and economic

⁶³ Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution*. New York: Routledge, 2016. 56. (Lightfoot 2016)

⁶⁴ *Ibid.*, 58.

⁶⁵ United Nations, "General Assembly adopts Declaration on Rights of Indigenous Peoples; 'Major step forward' towards human rights for all, says president," September 13, 2007. Accessed August 3, 2016. <http://www.un.org/press/en/2007/ga10612.doc.htm>

circumstances.”⁶⁶ While optimistic in scope, combining a lack of action in general towards improving living standards for on or off reserve Indigenous peoples, protracted domestic legal battles against Indigenous litigants regarding environmental protections, and labelling a declaration meant to prescribe the minimum standards for Indigenous rights as aspirational hints at an underlying opportunism and bad faith compliance. While the declaration has normative pull in areas that Lightfoot labels as soft rights, and rhetorically in general, examining a larger picture forces an observer to question Canada’s commitment to UNDRIP, and whether it intended to comply with the declaration. Part of the problem lies in the fact that the norm’s codified form allowed for flexibility, including counter-normative logic that allows for minimal action.

Seemingly ending the question of Canada’s intent to comply with UNDRIP, Canadian Minister of Indigenous and Northern Affairs Carolyn Bennett, declared in May 2016 that Canada “is now a full supporter of the Declaration, without qualification... Adopting and implementing the Declaration means that we will be breathing life into Section 35 of Canada’s Constitution, which provides a full box of rights for Indigenous peoples.”⁶⁷ Setting aside the lack of specificity around the substantial effects of compliance, it would appear that Canada had taken a critical step towards full socialization through discursive compliance in a high cost arena without any qualifications. However, Minister of Justice Jody Wilson-Raybould acknowledged two months later that “simplistic approaches, such as

⁶⁶ Indigenous and Northern Affairs Canada, “Canada’s Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples,” November 12, 2010. Accessed August 1, 2016.

<http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>

⁶⁷ Government of Canada, “Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples,” May 10, 2016. Accessed July 15, 2016.

http://news.gc.ca/web/article-en.do?mthd=tp&crtr.page=1&nid=1063339&crtr.tp1D=1&_ga=1.40822306.1066794629.1422563602

adopting the UNDRIP as being Canadian law, are unworkable and, respectfully, a political distraction to undertaking the hard work required to actually implement it,” indicating a possible rhetorical line of defense similar in form to Hawkins and Jacoby’s ‘ambiguous compliance among complexity’ to justify avoidance.⁶⁸ Importantly, though avoidance necessarily is defined by opportunism and bad faith, it is opportunism and bad faith in relation to the norm; while policy makers may have sincere intentions in improving Indigenous rights, their intent to sidestep the norm’s provision and prescriptions is what allows the case to be framed in terms of avoidance. Canada’s relationship with Indigenous peoples and nations remain fraught with complexity, but the issue becomes one where partial compliance is conflated with full compliance by outside observers, who lessen the pressures on Canada to fully comply.

The avoidance likely to continue unabated relate to the core question of materiality and land. While social mechanisms of settler colonialism are being addressed in accordance with UNDRIP as Lightfoot identifies, the question of land is sidelined in a way inconsistent with other parts of the declaration. Borrowing Smith’s language, Canadian action in relation to the question of land and self-determination of Indigenous peoples represents an opportunism that violates moral and quasi-enforceable norms. For example, while Canada rhetorically complies with UNDRIP, underfunding of child welfare resources accessed by Indigenous peoples compared to those meant for the general population underlines the systemic problems underlying the Canadian state’s logics when compared to the logic at

⁶⁸ Indigenous and Northern Affairs Canada, “Assembly of First Nations - Annual General Assembly,” July 12, 2016 Accessed July 20, 2016. <http://news.gc.ca/web/article-en.do?nid=1098629&tp=970>

the core of UNDRIP.⁶⁹ Elsewhere, UNDRIP Article 32 requires free, informed, and prior consent of Indigenous peoples on issues that impact them, but a leading Canadian law firm conditions consent in certain circumstances, meaning that the full cost of participating in UNDRIP can be minimized.⁷⁰ The phenomena identified so far map closely onto avoidance; confusion of definitions, obfuscation or willful ignorance of facts, and legitimate responses that partially meet compliance requirements.

Subtle changes⁷¹

Freezing the narrative here clearly paints a picture of ongoing avoidance, but the dynamic nature of the relationship between norm proponents and opponents would be completely ignored. The conversational nature of avoidance and evasion cannot be seen by only examining a moment in extreme detail. Rather, examining a timeline of events reveals the gradual ebb and flow of ideas and dialogue that leads to norm changes. Contrasting initial contact between Indigenous nations and European settlers and contemporary contact reveals that while exclusionary and assimilatory impulses still exist, their manifestations have changed. I suggest again that rather than approaching avoidance and evasion as a pure case of black and white, these phenomena can also be understood in a dialogical manner, and a way that actors might negotiate tenuous relationships with each other without necessarily moving into the realm of open confrontation. By allowing

⁶⁹ Tim Fontaine, "Canada discriminates against children on reserves, tribunal rules," *CBC News*. January 26 2016. Accessed August 7, 2016. <http://www.cbc.ca/news/aboriginal/canada-discriminates-against-children-on-reserves-tribunal-rules-1.3419480>

⁷⁰ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution adopted by the General Assembly*, 2 October 2007, A/RES/61/295. Article 32. See also: Torys LLP. *Free, Prior and Informed Consent in Canada: Towards a New Relationship with Indigenous Peoples*, 2016. 20-8.

⁷¹ Lightfoot 2016.

negotiations over substantive rights to take place in a less confrontational manner, the costs of challenging a norm significantly decrease.

I briefly turn to neuroscience to highlight the point that avoidance differs in effect and sanction from evasion. In examining the intersections between norms and neuroscience, Hopf argues that actions relating to fully socialized norms are “automatic and unreflective...not even boundedly rational, as there is not deliberate consideration of even one alternative to what is automatically perceived and practiced,” gesturing to a norm’s subconscious influence on behaviour.⁷² He further notes that breaching a deeply socialized norm can prompt an unreflexive and aggressive response “regardless of the ‘objective’ nature of a rival’s conduct..setting into motion the self-fulfilling prophesy that makes an enduring rivalry automatic.”⁷³

Putting Hopf’s ideas in practice means that a direct challenge to a norm is a costly endeavour, necessitating less direct means of norm change, especially those impacting the everyday logics of actors and individuals. Identifying evasion in the way WADA and the IPC has done with Russian doping aligns closely with Hopf’s initial finding; that breaching a norm openly will activate an aggressive response directed towards the identified rival. The logic behind the norm is clandestinely subverted, and in the heat of the moment, the need for the norm’s integrity to remain intact for the evader to thrive, and therefore, the need for the norm to be strong may be missed. Even though evasion can strengthen the underlying norm, the penalty for evasion is automatic, reflexive, and aggressive, and an evasive actor is not likely to receive any thanks from the regime for pointing out weak points. Rather,

⁷² Ted Hopf, “The logic of habit in International Relations,” *European Journal of International Relations* 16, vol. 4 (2010): 548, 552.

⁷³ *Ibid*, 552.

detected evasion sets up a binaristic relationship between the evasive actor and the regime. In the case of Indigenous rights, avoidance on the part of the state generates social sanction from Indigenous communities and the overarching regime, but does not shut down the potential for dialogue between actors in the same way that a deliberate and bad faith breach of the norm would otherwise do. Under Hopf's theory, we might understand that the novelty of avoidance, sitting somewhere between evasion and full compliance, forces actors to critically think about their response, instead of entirely relying on an instinctive or habitual response. It is in this grey space that shifts in deeply entrenched logics might begin to take hold, without necessarily waging a direct assault against the norm itself.

As noted, Indigenous rights during earlier periods of interaction were trampled on, and dialogue was conducted in binary terms through court imposed decisions and through imposed state law. Consent was not asked for by the federal government, nor necessarily conferred by Indigenous peoples. The shift from overt violence to latent violence can be linked to a gradual dialogue on what constitutes acceptable action. While this would appear to be simply relabelling tactical concessions, avoidance differs in that opportunistic bad faith is always assumed instead of good faith dealings, necessitating constant pressure on the actor undergoing socialization. While Risse and Sikkink also require that "sustained bilateral and multilateral network pressure" be applied to transform tactical concession into substantial action, the risk lies in the teleological movement that the spiral model assumes of compliance.⁷⁴ Avoidance fills in the small, but important gap in their theory, and assumes that an avoidant state, without revealing the opportunism at play, can escape undetected and accepted as a fully compliant member of the regime, without necessarily

⁷⁴ Risse and Sikkink, 20 (figure 1.3).

sharing the costs of compliance. Instead of compliance being an eventuality and given, avoidance assumes the worst case scenario, and takes what amounts to a more traditional realist stance on socialization.

Frequent dialogue and pressure, though still contentious, does not always take in oppositional forums and in the open, but also behind closed doors. For example, the July 2016 meeting of provincial and federal leaders also included Indigenous leaders from a variety of organizations and representing a variety of constituencies.⁷⁵ Moving backwards in time, we can trace inclusion and representation in decision making fora that impact Indigenous peoples; Borrows notes that the negotiation of the Charlottetown Accord involved “national Indigenous organizations [working] with first ministers to debate and draft a series of amendments to the constitution,” which was a step forward from the Meech Lake Accord, which famously met its end as Elijah Harper, an Indigenous politician from the Red Sucker Lake First Nation, voted against a crucial motion in its implementation because of a lack of consultation, which was a step forward from previous policies of exclusion.⁷⁶ The types of pressures, leverage, and cost brought to bear will vary depending on the audience and arena for dialogue, but this ability to adapt and modify negotiation tactics allow for less politically popular ideas to be floated without incurring as heavy a cost.

While state exclusion continued, and continues through to the present day, gradual recognition of Indigenous rights (primarily cultural) appear to gradually lead towards

⁷⁵ Council of the Federation, “Premiers work to improve the state of the federation,” July 21, 2016. Accessed August 1, 2016. http://canadaspremiers.ca/phocadownload/newsroom_2016/state_of_the_federation_july21.pdf

⁷⁶ John Borrows, *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016. 78. See also: Ian Peach, “The power of a single feather: Meech Lake, indigenous resistance and the evolution of indigenous politics in Canada,” *Review of Constitutional Studies* 16, vol. 1 (October 2011); 2.

compliance. This is not to say that the entire relationship between the Canadian state and Indigenous peoples is characterized by openness and good faith; to do so would be dangerously optimistic at the very least, but I argue that gradual compliance through avoidance, though problematic, can be a form of socialization, and that avoidance is a way for an actor to cushion and postpone their obligations to a norm for as long as possible. An actor can discursively comply, and appear to make moves towards materially complying, but if they have the capacity to comply with their obligations and does not do so, we can generally find external influences that would encourage us to label such a case as one of active avoidance.

Indigenous scholars place land at the centre of Indigenous identities; Alfred and Corntassel define Indigeneity as an “oppositional, place-based existence, along with the consciousness of being in struggle against the dispossessing and demeaning fact of colonization by foreign peoples, that fundamentally distinguishes Indigenous peoples from other peoples of the world.”⁷⁷ Nishnaabeg scholar Leanne Simpson also highlights this integral link between land and Indigeneity with a story (mirroring traditional forms of knowledge transmission) of how a young girl discovered maple syrup, and how her community learned how to make syrup.⁷⁸ Simpson posits a number of “what if’s” that relate to knowledge systems that are specific to certain territories and place in her story.⁷⁹ Places are forms of knowledge, and to ignore Lightfoot’s “hard rights” to focus solely on “soft,” or cultural rights ignores the deep links, especially in Indigenous cultures, that inform a

⁷⁷ Taiaiake Alfred and Jeff Corntassel, “Being Indigenous: Resurgences against Contemporary Colonialism,” *Government and Opposition* 40, vol. 4 (2005): 597.

⁷⁸ Leanne Betasamosake Simpson, “Land as pedagogy; Nishnaabeg intelligence and rebellious transformation,” *Decolonization: Indigeneity, Education and Society* 3, no. 3 (2014): 2-5.

⁷⁹ *Ibid.*, 8-9.

place-based existence that Alfred and Cornthassel identify in their definition. Focusing purely on the social aspect of Indigeneity without addressing material, land based aspects of identity risks stripping Indigenous identities of significant meaning. This sits at the crux of this particular case study and gives the push against avoidance urgency and direction. The pressures on Indigenous peoples and the state's potential costs generated by this issue, means avoidance will characterize relations between Indigenous peoples, nations, and Canada, but the contentiousness of the issue will likely prevent avoidance from becoming an end state in itself.

By examining the development of UNDRIP, and associated Indigenous rights, avoidance can be seen as a problem that continues to plague norm proponents, but can also be leveraged into developing more compliant action and actors, even if the actor in question does not believe in the norm. If a norm is mostly substantially correct, then approaching avoidance as the beginning of a conversation fits into Risse and Sikink's spiral model; the difficult part, it seems is providing enough pressure and momentum to ensure that an actor moderates their behaviour over time to match that of the norm. If a norm is substantially problematic, avoidance can be a way to test an alternative to an irrational habit, without incurring associated costs of a norm breach in the way that overt opposition may incur.

Conclusion

Norms matter. The realist position that norms do not matter is untenable for a variety of reasons, not the least that some realists have gradually accepted the value of social interaction as a force with material impacts, rather than being purely ephemeral.⁸⁰ Non-compliant actors ultimately comply with the norm for a variety of reasons; economic sanction, ostracization from communities, or an inability to access benefits associated with the norm. By looking at evasion and avoidance, I argue that an actor may be able to have their cake and eat it too. Engaging in partial compliance under the facade of full compliance breaks away from theories that link non-compliance and contestation. Contestation assumes the norm in question is not desired; evasion and avoidance take advantage of the norm's logics and presumptions and require it to continue to reap the benefits.

The repercussions of evasion and avoidance are many; norm proponents in an attempt to solidify their norm may collapse avoidance into norm violations, and try and narrow the grey zone between compliance and non-compliance further, as parliamentarians and policy experts everywhere attempt to do with anti-avoidance clauses.

⁸¹ The presumed sanction for evasion is far greater than avoidance; avoidance plays on the ambiguous legitimacy of action, whereas evasion is non-compliance under a veneer of compliance. In turn, evasion would likely simplify the process of strengthening norms, building on Badescu and Weiss. By collapsing avoidance into a case of non-compliance, bad faith is always presumed, which allows misapplication to be quickly identified. Avoidance,

⁸⁰ John Gerard Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge," *International Organization* 52, no. 4 (International Organization at Fifty: Exploration and Contestation in the Study of World Politics, Autumn 1998): 861.

⁸¹ *Income Tax Act* 17.2.

however, poses a more interesting scenario, as it borrows legitimacy from the norm. While some cases of avoidance will likely be declared non-compliant, argumentation surrounding the method of avoidance could lead to shifting norm boundaries that applicatory contestation is concerned with.

Most importantly, evasion and avoidance presume opportunistic dealings, which, though constructing a pessimistic view of how the world operates, is an important point that is easily sidelined. The liberal optimism at the root of international relations influences the logic of associated disciplines including normative theory, but competing logics from other philosophical and political traditions that interact with liberalism introduce further complexity into teleologically structured compliance theories. Even in the throes of emergence and growth, evasion and avoidance can take hold and attempt to bury a norm before it comes into its own.

Assuming that a norm will be universally accepted after a period of socialization and pressure sets up a situation where norms can be tactically adhered to without detection, and presents little in the way of incentives for a norm to truly become internalized. If an actor learns that saying the right words, or appearing a certain way even if they wouldn't like doing so means that they get rewarded, it would make sense for them to find the shortest path and path of least resistance to that reward. And in addition, if a norm appears to be internalized under duress, has that norm become part of the standard operating logics of an actor? Or has the consequences of not adhering been put into the actor's instinctive logics? I argue that ultimately, if an actor should want have reason to oppose a norm, or complies with a norm that is costly and against their interests, compliance

indicators generated should be scrutinized and never taken at face value. This is not to say that norms will never force states to act against their own opportunistic self interest, but that in some cases, what appears to be too good to be true, might just be too good to be true.

Approaching non-compliance without necessarily linking it to contestation opens up different channels of enquiry, and challenges thinkers to more closely question whether their indicators for socialization are truly working. The most pointed critiques against norms may be misguided and outdated, but the cynicism around norms that informs realist lines of thought can be extrapolated to question whether certain variables are truly linked to each other. Most actors comply with international norms most of the time; I argue this is because non-compliance is too costly. If norms are a social fact, and they cannot be avoided, then actors seeking to engage in restricted activity will be creative. Whether it be a realist logic that seeks to drive up medal counts or mitigate tax obligations, or an understanding that changing social logics might be a gradual process, there is an underlying opportunism that takes advantage of limited abilities to understand the full meaning behind signals. Norms ultimately are a social construct that attempt to codify intent and meaning, but come from a certain place and time that makes certain assumptions about logic, intent, and action. Human ingenuity, potential, and creativity ensure that any codification of rules can be made obsolete in the absence of certain assumed logical restrictions. Similarly, the same ingenuity, potential, and creativity can engineer solutions to exploit these same gaps in logics to find the grey zone between intended action and a transactional logic. If there's a will, there's a way.

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