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Contestation 'all the way down'? The grammar of contestation in norm research

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Abstract

The meaning of norms is empirically contested. Supposing an inherent instability of norm meaning, contestation, therefore, represents a fundamental conceptual challenge to the mainstream view on norms as shared understandings. By offering a grammatical reading of Antje Wiener's approach to contestation, we examine how norm research addresses this challenge to its theoretical core assumption. We argue that the grammar of Wiener's approach, despite its reflexive starting point, ultimately reintroduces an understanding of norms as facts and leads to a normative 'politics of reality'. This effectively turns contestation into a disruption of the 'normal' state of norms. Demonstrating the challenges of theorising norms *with* rather than *against* contestation, the article concludes that norm research has yet to find ways to account for contestation 'all the way down' in order to sustain norms as a productive analytical concept in IR.

Keywords

Contestation; Norm Research; Grammatical Reading; Meaning-in-use

Introduction

The meaning of norms is contested.[1] The regulative and constitutive implications of norms but also their normative and prescriptive content differ depending on time,[2] place,[3] or

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[1] We presume that not only primary norms are contested, but also secondary norms, that is, rules on norm application and rules over rules, including rules on legal reasoning. See Friedrich Kratochwil, 'How do norms matter?', in Michael Byers (ed.), *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford: Oxford University Press, 2001). We thank one reviewer for pointing out this differentiation.

[2] Andrea Birdsall, 'But we don't call it "torture"! Norm contestation during the US "War on Terror"', *International Politics*, 53:2 (2016); Andrea Liese, 'Exceptional necessity – how liberal democracies contest the prohibition of torture and ill-treatment when countering terrorism', *Journal of International Law and International Relations*, 5:1 (2009); Diana Panke and Ulrich Petersohn, 'Norm challenges and norm death: the inexplicable?', *Cooperation and Conflict*, 51:1 (2016).

[3] Amitav Acharya, 'How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism', *International Organization*, 58:2 (2004); Bernd Bucher, 'Acting abstractions: Metaphors,

social context.[4] How norms are to be applied to specific situations, or whether they apply at all is a political issue and therefore associated with contestation and controversy.[5] It seems that the meaning of norms is elusive, shifting, and contested when it comes to their application in specific situations. The empirical observation of norm contestation has been supported by a long-standing, albeit often under-recognised argument of constructivism that the interpretation of meaning is determined by context rather than by universal principles.[6]

This understanding of norms and their meaning differs considerably from the conventional wisdom in mainstream International Relations (IR) norm research. Here, norms are defined as 'shared understandings', and many studies have analysed how processes of norm emergence, norm entrepreneurship, and norm diffusion can generate such a shared understanding.[7] The empirical practice of norm contestation contradicts such an understanding of norms and their implications. Moreover, it questions the foundations of mainstream norm research, as it raises doubts about the very possibility of fixing the meaning of norms as a prerequisite for defining a 'shared understanding'. As a result, the almost mundane insight that norms have different meanings according to time, space, or social context leads to a fundamental conceptual problem in norm research. A *contested* norm, from this perspective, represents almost a contradiction in terms, as it is difficult to imagine that norms can be both contested and shared at the same time. The question then, is how norm research can conceptually account for norm contestation and how it can 'theorize with the unfixity'[8] of norm meaning.

Contestation, we argue, requires norm researchers to reconsider the premises of norm research and its theoretical core regarding the concept of norms. As contestation points to a tension between stability and change,[9] its integration into theory might well be the key to address some of the unresolved problems of norm research, for example the dynamics of norm change, the relationship

narrative structures and the eclipse of agency', *European Journal of International Relations*, 20:3 (2014); David Capie, 'Localization as resistance: the contested diffusion of small arms norms in Southeast Asia', *Security Dialogue*, 39:6 (2008); Susanne Zwingel, 'How do norms travel? Theorizing international women's rights in transnational perspective', *International Studies Quarterly*, 56:1 (2012).

[4] Antje Wiener, *The Invisible Constitution of Politics: Contested Norms and International Encounters* (Cambridge; New York: Cambridge University Press, 2008); Antje Wiener, *A Theory of Contestation* (Berlin: Springer, 2014); Nicole Deitelhoff and Lisbeth Zimmermann, 'Things we lost in the fire: How different types of contestation affect the validity of international norms', *PRIF Working Papers*, no. 18 (Frankfurt am Main, 2013).

[5] Jennifer L. Bailey, 'Arrested development: the fight to end commercial whaling as a case of failed norm change', *European Journal of International Relations*, 14:2 (2008); Anders Blok, 'Contesting global norms: Politics of identity in Japanese pro-whaling countermobilization', *Global Environmental Politics*, 8:2 (2008); Alan Bloomfield, 'Norm antipreneurs and theorising resistance to normative change', *Review of International Studies*, online first (2015).

[6] Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989).

[7] Annika Björkdahl, 'Norms in International Relations: Some conceptual and methodological reflections', *Cambridge Review of International Affairs*, 15:1 (2002); Martha Finnemore and Kathryn Sikkink, 'International norm dynamics and political change', *International Organization*, 52:4 (1998); Peter J. Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996).

[8] Charlotte Epstein, 'Constructivism or the eternal return of universals in International Relations: Why returning to language is vital to prolonging the owl's flight', *European Journal of International Relations*, 19:3 (2013), p. 501.

[9] By addressing stability as opposed to change, we take up the mainstream understanding of norm stability based on a fixed meaning. This, however, should not imply that the ambiguity of norm meaning cannot generate

between norm validity and facticity, and the normative 'oughtness'[10] of norms. This kind of integration may also allow researchers to deal with concerns about 'consistency' in constructivist theory regarding the social construction of social reality,[11] the 'communicative turn',[12] and the fit between a positivist epistemology and a constructivist ontology.[13] Seen in this light, norm contestation holds great potential, but the stakes are high, as it requires researchers to reconsider the conceptual core of norms. Consequently, the purpose of this article is to investigate how norm research has accommodated contestation and the profound challenge to its theoretical core.

We seek to address this question by offering a 'grammatical reading'[14] of Antje Wiener's approach to norms. Revealing the grammar of Wiener's approach by closely following her line of argument, we show how contestation is accounted for and how it relates to the fixing of the meaning of norms in what we described above as shared understandings. Our grammatical reading focuses only on a single approach, however we would argue that Wiener's approach to norms is paradigmatic in addressing contestation on the conceptual level. Norm research has made references early on to contestation in various forms and by different terms, while largely excluding it from its conceptual core. Recently, however, an increasing body of literature addressing contestation as a major conceptual concern for norm research has emerged. Among this, Wiener is the only one to offer an approach that explicitly takes contestation as the starting point of its theoretical understanding of norms and their role in international politics. Arguably, Wiener presents a paradigmatic case for analysing how norm research accounts for the conceptual challenge posed by norm contestation. Analysing Wiener's approach, then, can be used to arrive at more general conclusions regarding the way norm research can account for contestation. Our reading of Wiener's approach indicates that current norm research tends to salvage the established understanding of norms as 'shared understanding' and to treat contestation conceptually as an anomaly affecting the 'normal' operations of norms. Our preliminary conclusion based on this finding would be that the challenge

norm stability in a different way. However, the focus on the intersubjective understanding of norm meaning in mainstream norm research precludes such a view. We thank one of the reviewers for clarifying that point.

[10] Finnemore and Sikkink, 'International norm dynamics', p. 891.

[11] Stefano Guzzini, 'A reconstruction of constructivism in International Relations', *European Journal of International Relations*, 6:2 (2000).

[12] Mathias Albert, Oliver Kessler, and Stephan Stetter, 'On order and conflict: International Relations and the "communicative turn"', *Review of International Studies*, 34:SI (2008); Jutta Weldes and Diana Saco, 'Making state action possible: the United States and the discursive construction of "The Cuban Problem", 1960–1994', *Millennium – Journal of International Studies*, 25:2 (1996).

[13] Ted Hopf, 'The promise of constructivism in International Relations theory', *International Security*, 23:1 (1998); Roxanne Lynn Doty, 'Aporia: a critical exploration of the agent-structure problematique in International Relations theory', *European Journal of International Relations*, 3:3 (1997); K. M. Fierke, 'Critical methodology and constructivism', in K. M. Fierke and Knud E. Jørgensen (eds), *Constructing International Relations: The Next Generation* (Armonk, NY: M. E. Sharpe, 2001); Jutta Weldes, 'Constructing national interests', *European Journal of International Relations*, 2:3 (1996). For a discussion of the relationship between constructivism and critical approaches in IR, see also Richard M. Price and Christian Reus-Smit, 'Dangerous liaisons? Critical international theory and constructivism', *European Journal of International Relations*, 4:3 (1998).

[14] There is a growing body of grammatical readings analysing the theoretical construction of concepts. Examples include Véronique Pin-Fat, *Universality, Ethics and International Relations: A Grammatical Reading* (London; New York: Routledge, 2010); Shane P. Mulligan, 'The uses of legitimacy in International Relations', *Millennium – Journal of International Studies*, 34:2 (2006); Roisin Read, 'Language as a middle ground: Using grammatical reading to "find" theory in development practice', *Progress in Development Studies*, 14:3 (2014); Laura Considine, '"Back to the rough ground!": a grammatical approach to trust and International Relations', *Millennium – Journal of International Studies*, 44:1 (2015).

posed by contestation is too fundamental for upholding norms as 'shared understandings'. This has important implications for norm research: If contestation ultimately transcends the boundaries of norm research in a narrow understanding, than it arguably questions the programmatic core of norm research and might call for turning to alternative concepts such as discourse or practice instead.

In order to understand how Wiener's approach accounts for norm contestation, a 'grammatical reading' seems most suitable. As an analytical perspective, a grammatical reading is predicated on Ludwig Wittgenstein's premise of meaning following practice.[15] The meaning of contestation in norm research, as seen from this perspective, does not primarily depend on the *prima facie* definitions and conceptualisations given but on the argumentative moves taken. These moves not only shape the meaning of a theoretical concept but also our understanding of its role in world politics:

> [G]rammar controls what is possible in the world by regulating what kind of statements one can make about the world. In this way then, it is grammar that tells us what kind of object anything is and expresses its 'essence'.[16]

Rather than offering a conceptualisation of contestation, a grammatical reading explores how a theoretical concept is fixed to a particular meaning and implies a particular 'politics of reality',[17] that is, how a particular understanding of political reality is normalised by the foundations and the conceptual moves undertaken to develop these foundations.[18] Therefore, the purpose of a grammatical reading is not to 'test' a theory against empirical cases or to uncover conceptual inconsistencies in a theory, but to explicate how specific theoretical moves constitute conceptual premises and empirical observations such as contestation as a phenomenon. By reading the grammar of Wiener's approach to norm contestation, we provide new insights concerning both the limits of our understanding of norms and the 'politics of reality' implied by these norms. A grammatical reading, therefore, is an 'engagement with practice',[19] as it focuses on the construction of (scholarly) worlds and explicates the taken-for-granted implications of these worlds. We believe that such an exercise in critically engaging theoretical approaches – in our case, to norm contestation – represents an important step toward theoretical innovation in our understanding of norms and their role in world politics.[20]

The article proceeds as follows: the next section provides an overview of different approaches to contestation in norm research by discussing their particular treatment of contestation and the implications of it for conceptualising norms as intersubjective 'social facts'. We argue that Wiener's account of contestation is the most progressive approach in this respect, which makes it a paradigmatic case for a grammatical reading. The subsequent sections then offer a grammatical reading of Wiener's approach. We show how her theoretical grammar ultimately serves to 'evacuate' contestation from the empirical-analytical perspective and to render it a problem of normative theorising. The third section demonstrates that Wiener's approach is based on an ontologisation of

[15] Ludwig Wittgenstein, *Philosophical Investigations* (Chichester: Wiley-Blackwell, 2009).
[16] Pin-Fat, *Universality, Ethics and International Relations*, pp. 21–2.
[17] Maja Zehfuss, *Constructivism in International Relations: The Politics of Reality* (Cambridge: Cambridge University Press, 2002).
[18] Pin-Fat, *Universality, Ethics and International Relations*, pp. 4–30.
[19] Ibid., p. 14.
[20] In this regard, our approach also follows a line of critical engagements with theory such as Tine Hanrieder, 'The false promise of the better argument', *International Theory*, 3:3 (2011); Sebastian Schindler and Tobias Wille, 'Change in and through practice: Pierre Bourdieu, Vincent Pouliot, and the end of the Cold War', *International Theory*, 7:2 (2015); Zehfuss, *Constructivism in International Relations*.

norms as cultural facts, and that contestation comes to be understood as the difference between diverging cultural interpretations of norm meaning. The fourth section shows that this interpretation reconceptualises contestation from an outcome of political encounters to one of 'hidden' differences: Contestation becomes an anomaly in norm practice resulting from invisible differences, which are, in turn, due to different understandings of norms associated with different cultural backgrounds. Section five argues that this recourse to norms as cultural facts and the turn to 'invisibility' result in a particular politics of reality: As an anomaly, contestation is no longer considered an empirical fact that has to be accommodated by an analytical approach to norms, but as a problem of legitimacy that must be addressed by normative theorising. The turn to agonistic institutions does not only introduce a liberal understanding of politics but also demonstrates an understanding of norms as unitary and unambiguous shared understanding. We conclude this article by arguing that contestation offers novel approaches to understanding and theorising norms, but at the same time poses questions regarding the programmatic identity of norm research.

Perspectives on contestation in constructivist norm research

Constructivist approaches to IR rely on a definition of norms as 'shared understandings' and emphasise the intersubjective quality of norms.[21] Norm research has, however, been empirically and theoretically confronted with the observation of contestation: A given norm means different things to different people. In political practice, its meaning therefore becomes contested. This, however, calls into question an ontologisation of norms as stable 'social facts'. Instead, norms appear to be 'vague and elusive' rather than fixed, as the definition of a singular 'shared understanding' would imply.[22] Contestation as a defining moment of norms in practice has been addressed quite differently by norm research. Reviewing the literature, we identify three perspectives on norm contestation. While they all acknowledge, to different degrees, the existence of contestation and its relevance, they also demonstrate that their grammars, that is, their conceptual premises and implications affect their responses to the question of how contestation relates to an understanding of norms as shared meaning.

The first perspective on contestation found in the literature largely ignores it as a problem and excludes it from further conceptualisation. This perspective is quite common in mainstream norm research. Especially early constructivist norm research was eager to establish that norms matter in international relations rather than to point out their ambiguities or indeterminacy. Drawing attention to contestation was less important than establishing norms as (social) 'facts',[23] investigating the emergence of new norms,[24] their implementation in domestic

[21] Finnemore and Sikkink, 'International norm dynamics'; Björkdahl, 'Norms in International Relations'; Katzenstein, *The Culture of National Security*.

[22] Kees van Kersbergen and Bertjan Verbeek, 'The politics of international norms: Subsidiarity and the imperfect competence regime of the European Union', *European Journal of International Relations*, 13:2 (2007), p. 221.

[23] Antje Wiener, 'The dual quality of norms and governance beyond the state: Sociological and normative approaches to "interaction"', *Critical Review of International Social and Political Philosophy*, 10:1 (2007), p. 49.

[24] Audie Klotz, *Norms in International Relations: The Struggle against Apartheid* (Ithaca, NY: Cornell University Press, 1995); Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998); Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca: Cornell University Press, 2003); Richard M. Price, *The Chemical Weapons Taboo* (Ithaca: Cornell University Press, 1997); Nina Tannenwald, 'The nuclear taboo: the United States and the normative basis of nuclear non-use', *International Organization*, 53:3 (1999).

politics,[25] the role of deliberative processes in establishing norms,[26] or the agency of norm entrepreneurs.[27] The emphasis on these critical projects led to shift away from the issue of norm contestation. The indeterminacy and ambiguity of norm meaning was, however, not completely neglected and inspired theoretical innovations and reflections, although this kind of scholarship did not question the dominant conceptualisation of norms as shared understandings. This includes an early constructivist emphasis on the strategic framing of meaning by norm entrepreneurs in particular and actors in general in processes of norm emergence.[28] Norm research also pointed to the 'counterfactual validity' of norms, that is, behaviour violating norms might not necessarily undermine the norm, but, in fact, strengthen its validity by defining the scope of application as related to its oughtness.[29] Finally, critically responding to a bias in norm research concerning successful cases of norm emergence,[30] a rich body of literature has discussed the erosion and the 'death' of norms[31] as well as failure to establish new international norms.[32] These developments and investigations of 'bad norms' such as counter-terrorism,[33] the strategies of potential 'rogue' norm entrepreneurs,[34] or the so-called permissiveness of norms such as slavery or chemical weapons[35] indicate that constructivist norm research has been aware of the indeterminate character of norms early on. However, it has been addressed either by asserting the normality of having a fixed norm meaning or by understanding ambiguity as a state of incomplete norm implementation. By arguing that norms matter, rather than explaining how they come to matter, the first perspective on norm contestation regards contestation, essentially as a non-problem.

In contrast, the second perspective treats norm contestation as a problem that is restricted to specific situations and that can be solved politically in order to make a norm matter. Approaches applying this perspective address the challenges posed by differing interpretations of a given norm, that is of contestation at an empirical-analytical level. A case in point is made by studies on norm diffusion,

[25] Thomas Risse, Steve C. Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

[26] Cornelia Ulbert and Thomas Risse, 'Deliberately changing the discourse: What does make arguing effective?', *Acta Politica*, 40:3 (2005); Neta C. Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge: Cambridge University Press, 2002).

[27] Jutta Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Washington: Georgetown University Press, 2007); Keck and Sikkink, *Activists Beyond Borders*.

[28] Finnemore and Sikkink, 'International norm dynamics', p. 911; Rodger A. Payne, 'Persuasion, frames and norm construction', *European Journal of International Relations*, 7:1 (2001), p. 38; Ole Elgström, 'Norm negotiations: the construction of new norms regarding gender and development in EU foreign aid policy', *Journal of European Public Policy*, 7:3 (2000), p. 462.

[29] Friedrich Kratochwil and John G. Ruggie, 'International organization: a state of the art on an art of the state', *International Organization*, 40:4 (1986), p. 767.

[30] Jeffrey W. Legro, 'Which norms matter? Revisiting the "failure" of internationalism', *International Organization*, 51:1 (1997), p. 34.

[31] Elvira Rosert and Sonja Schirmbeck, 'Zur Erosion internationaler Normen: Folterverbot und nukleares Tabu in der Diskussion', *Zeitschrift für InternationaleBeziehungen*, 14:2 (2007); Ryder McKeown, 'Norm regress: US revisionism and the slow death of the torture norm', *International Relations*, 23:1 (2009); Diana Panke and Ulrich Petersohn, 'Why international norms disappear sometimes', *European Journal of International Relations*, 18:4 (2012).

[32] Bailey, 'Arrested development'.

[33] Liese, 'Exceptional necessity'; Regina Heller, Martin Kahl, and Daniela Pisoiu, 'The "dark" side of normative argumentation – the case of counterterrorism policy', *Global Constitutionalism*, 1:2 (2012).

[34] Bloomfield, 'Norm antipreneurs'.

[35] Tannenwald, 'The nuclear taboo'.

which have investigated contested local adoptions of global norms.[36] This kind of perspective can provide answers to the variety and change of norm meaning in different contexts and remains committed to an understanding of norms as shared understandings: Global norms obtain local validity and facticity only if they either form a 'cultural match'[37] with local norms, displace these norms, or are rejected. Successful 'localisation' stabilises norms, enhancing their international legitimacy and compliance.[38] This unidirectional understanding of norm diffusion from the global to the local has been met with scepticism, as empirical studies suggest a more complex relationship between various levels of norm emergence,[39] point to possible 'misinterpretations'[40] of and 'resistance'[41] to international norms and stress the role of actors and agency in norm diffusion.[42] Hence, the literature on norm diffusion explicitly addresses norm contestation and accepts this conceptual challenge by focusing on processes of translating norms from the global to the local. However, by reducing the act of translation to a unidirectional arithmetic of matching local interpretations and global norms rather than a mutually constitutive process, the ambiguity of norm meaning is primarily seen as an obstacle to establishing a norm rather than an inherent quality of norms. From the point of view of norm diffusion, the tension between global norms and their different local interpretations – and the contestation resulting from this tension – can only be understood if one assumes that the goal is either to fix the meaning of a given norm on the local level or to have no norm at all.

A similar understanding of contestation is also apparent in the literature questioning the linearity of norm cycle models regarding the emergence and diffusion of norms, for example Martha Finnemore and Kathryn Sikkink's 'norm life cycle' or Thomas Risse *et al.*'s 'spiral model'. These models often rely on a teleology of the emergence and diffusion of norms.[43] Several contributions have, however, emphasised the role of feedback loops caused by contestation over indeterminate norm meaning. To Wayne Sandholtz, 'all normative structures generate disputes'[44] that drive cycles of normative change. For this reason, not only emerging, but also established norms face 'renewed battles'[45] about their meaning. Even if new international norms have been successfully established, there are different and competing interpretations of their meaning. Ultimately, norm cycles are 'fraught with

[36] Acharya, 'How ideas spread'; Lisbeth Zimmermann, 'Same same or different? Norm diffusion between resistance, compliance, and localization in post-conflict states', *International Studies Perspectives*, 17:1 (2016); Capie, 'Localization as resistance'; Jutta Joachim and Andrea Schneiker, 'Changing discourses, changing practices? Gender mainstreaming and security', *Comparative European Politics*, 10:5 (2012); Amy Gurowitz, 'The diffusion of international norms: Why identity matters', *International Politics*, 43:3 (2006); Andrew P. Cortell and James W. Davis, 'When norms clash: International norms, domestic practices, and Japan's internalisation of the GATT/WTO', *Review of International Studies*, 31:1 (2005); Jeffrey T. Checkel, 'Norms, institutions, and national identity in contemporary Europe', *International Studies Quarterly*, 43:1 (1999).

[37] Checkel, 'Norms, institutions, and national identity in contemporary Europe'.

[38] Acharya, 'How ideas spread', p. 248; Andrew P. Cortell and James W. Davis, 'Understanding the domestic impact of international norms: a research agenda', *International Studies Review*, 2:1 (2000), p. 69.

[39] Deitelhoff and Zimmermann, 'Things we lost in the fire'; Zwingel, 'How do norms travel?'.

[40] Cristina G. Badescu and Thomas G. Weiss, 'Misrepresenting R2P and advancing norms: an alternative spiral?', *International Studies Perspectives*, 11:4 (2010).

[41] Capie, 'Localization as resistance'; Zimmermann, 'Same same or different?'.

[42] Risse, Ropp, and Sikkink, *The Power of Human Rights*.

[43] Matthias Hofferberth and Christian Weber, 'Lost in translation: a critique of constructivist norm research', *Journal of International Relations and Development*, 18:1 (2015), p. 82; Bucher, 'Acting abstractions', p. 750.

[44] Wayne Sandholtz, 'Dynamics of international norm change: Rules against wartime plunder', *European Journal of International Relations*, 14:1 (2008), p. 105.

[45] van Kersbergen and Verbeek, 'The politics of international norms', p. 219.

contestation and reversals as state and non-state actors compete to identify, define and implement these norms'.[46] Literature within this perspective presents a challenge to the prevalent conception of norm cycle models by demonstrating the ongoing contestation over normative meaning not only during processes of norm emergence, but also in later stages of the norm life cycle such as norm diffusion. Such an approach allows for a perspective on the dynamics of norm change through feedback loops. It remains, however, still committed to an understanding of norms as shared understandings, which is, in turn, based on the assumption of a single fixed meaning. Contestation is contained to specific moments in the norm life cycle that define a norm's evolution precisely by overcoming it and re-establishing a (new or different) shared understanding. Norm contestation is explicitly addressed and acknowledged in this literature, but primarily as an obstacle or challenge to a clear and stable normative meaning. The problem of variety of norm meaning can then be solved by appropriate means, for example localisation or feedback loops eventually generating a shared understanding.

The third perspective on norm contestation represents a turn in norm research towards contestation as an inherent quality of norms. Here, norms are understood as a disputed 'contingent outcome'[47] of social interaction, which can only be fixed relatively or partially.[48] This perspective results from an emerging body of literature critically reviewing the conceptual tenets of norm research. Emphasising the benefits of adding more critical and poststructuralist views on norms, these contributions challenge the mainstream understanding of norms by reviewing the role of language, postcolonial legacies or epistemological foundations of mainstream constructivist norm research.[49] By explicitly questioning the focus of current norm research, these approaches offer great potential to reconceptualise norms and to address the challenges posed to norm theory by contestation.

Nicole Deitelhoff and Lisbeth Zimmermann, for instance, understand contestation as a variable that, depending on circumstances, may either strengthen or weaken norms. They argue that the implications of contestation depend on different types of contestation.[50] Thus, they present an account of contestation that is sensitive to context and that allows for a perspective on different forms and consequences of contestation. However, contestation of the basic meaning of any norm, as opposed to contestation regarding their application unavoidably ends in norm decay.[51] One could argue that Deitelhoff and Zimmermann draw this conclusion based on their definition of norms as negotiated facts in a Habermasian tradition. Contestation as a 'positive', that is, non-disruptive influence on norm strength is limited to contests around norm application as opposed to norm justification.

[46] Mona L. Krook and Jacqui True, 'Rethinking the life cycles of international norms: the United Nations and the global promotion of gender equality', *European Journal of International Relations*, 18:1 (2012), p. 106.

[45] Judith Renner, *Discourse, Normative Change and the Quest for Reconciliation in Global Politics* (Manchester: Manchester University Press, 2013), p. 19.

[48] Charlotte Epstein, 'Stop telling us how to behave: Socialization or infantilization?', *International Studies Perspectives*, 13:2 (2012), p. 137; Ronald R. Krebs and Patrick T. Jackson, 'Twisting tongues and twisting arms: the power of political rhetoric', *European Journal of International Relations*, 13:1 (2007), p. 41.

[49] Stephan Engelkamp, Katharina Glaab, and Judith Renner, 'Office hours: How (critical) norm research can regain its voice', *World Political Science Review*, 10:1 (2014); Hofferberth and Weber, 'Lost in translation'; Stephan Engelkamp and Katharina Glaab, 'Writing norms: Constructivist norm research and the politics of ambiguity', *Alternatives: Global, Local, Political*, online first (2015); Naeem Inayatullah and David L. Blaney, 'The dark heart of kindness: the social construction of deflection', *International Studies Perspectives*, 13:2 (2012); Charlotte Epstein, 'Symposium: Interrogating the use of norms in International Relations: an introduction', *International Studies Perspectives*, 13:2 (2012).

[50] Deitelhoff and Zimmermann, 'Things we lost in the fire', p. 1.

[51] Ibid., pp. 4–5.

A Habermasian approach, hence, assumes that norms are basically stable once their meaning has been fixed in a deliberative moment, which produces 'shared intersubjective acceptance'.[52] Application issues with their 'tolerance' for contestation are decoupled from the stable and fixed core of a norm's meaning. Therefore, contestation is only compatible with a norm if it does not question the core of its fixed meaning. By drawing an analytical line between norm application and the actual norm, which can only be contested at the cost of its validity, contestation is ultimately problematised as questioning the substantial core of norms.

In order to deal with the 'issue of norm battle' (that is, contestation), Kees van Kersbergen and Bertjan Verbeek propose to re-introduce 'old-fashioned regime theory'.[53] They argue that the analytical distinction in regime theory between principles, rules, norms, and decision-making can open up a perspective on norms that acknowledges that their meaning differs depending on actors.[54] Their argument contributes to the third perspective on contestation by focusing on the strategic rationale potentially included in contestation. To van Kersbergen and Verbeek adopting international regimes can serve the interests of actors because it allows for adopting multilateral agreements involving ambiguous norms *without* a consensus what these norms mean. This kind of approach basically again argues in favour of a conceptual differentiation of various types of contestation. However, as Friedrich Kratochwil and John G. Ruggie have remarked, regime theory implies a 'spectator epistemology' and a 'hierarchy of analytical components' – that is, a clear ontological distinction between principles, rules, norms, and processes.[55] Regime theory, consequently, emphasises an understanding of norms that presumes the stability of norm meaning. In van Kersbergen and Verbeek's case, this yields a narrow perspective focused on strategic battles between actors over the definition and reformulation of norms for their respective purposes.[56] The implicit 'normal' condition of norms that actors pursue by fighting normative battles is one of a fixed and stable meaning.

Wiener's approach represents an approach to norm contestation that differs from the others associated with what we call the third perspective. Rather than distinguishing between contestation and norms as 'shared understandings' from the outset, Wiener rejects an ontologisation of norms as facts and instead proposes to understand them as 'contested by default'.[57] Presupposing a dual quality of norms as both structuring interaction and being structured,[58] she argues that invisible norm contestation shapes the constitution of transnational governance by impairing its legitimacy. Making contestation visible, however, is assumed to have productive effects for enhancing democratic legitimacy. By subsuming her approach to contestation under a 'critical' constructivism, Wiener contributes to a body of research that has approached norms and normative meaning beyond the conceptual boundaries of norm research in a narrow sense. These approaches are critical on defining norms' shared understandings, but rather emphasise how norm meaning is underdetermined or even 'impossible'.[59] At the conceptual level, however, these approaches do not explicitly focus on norms, but on concepts such as rhetorical topoi,[60] Derridean notions of iteration

[52] Ibid., p. 4.
[53] van Kersbergen and Verbeek, 'The politics of international norms', p. 219.
[54] Ibid., p. 231.
[55] Kratochwil and Ruggie, 'International organization', pp. 769, 774.
[56] van Kersbergen and Verbeek, 'The politics of international norms', pp. 234–5.
[57] Antje Wiener, 'Contested meanings of norms: a research framework', *Comparative European Politics*, 5:1 (2007), p. 6.
[58] Wiener, *A Theory of Contestation*, p. 19.
[59] Zehfuss, *Constructivism in International Relations*; Kratochwil, *Rules, Norms, and Decisions*.
[60] Kratochwil, *Rules, Norms, and Decisions*.

and accountability,[61] Laclaudian hegemonic discourses and empty signifiers,[62] or Foucauldian discourse and governmentality.[63] Other literature applying practice theory to international relations focuses on the negotiation of normative meaning in everyday situations and their constituting effects, for example by studying communities of practice,[64] adopting Pierre Bourdieu's concepts of the field and the habitus,[65] Luc Boltanski's concept of orders of worth,[66] and Erving Goffman's concept of stigma[67] to IR. Arguably, these approaches contribute to a better understanding of the production and negotiation of normative meaning. At the same time, however, they emphasise other mechanisms of negotiating and mediating social and political interaction than the concept of norms as their focus of analysis.

Therefore, we deem it necessary to discuss the question of contestation in the context of norm research narrowly defined and to consider how the field has accounted for contestation within its conceptual boundaries. Wiener's approach offers the obvious starting point for this kind of investigation because her understanding of norms is essentially based on the assumption of contestation and explicitly theorises norms in terms of their unfixity. Wiener's approach, developed in several publications,[68] is the most advanced to date and, has inspired a number of follow-on contributions by other scholars.[69] Our grammatical reading, while focused on Wiener's

[61] Zehfuss, *Constructivism in International Relations*.

[62] Renner, *Discourse, Normative Change and the Quest for Reconciliation*; Chris Methmann, '"Climate protection" as empty signifier: a discourse theoretical perspective on climate mainstreaming in world politics', *Millennium – Journal of International Studies*, 39:2 (2010).

[63] Charlotte Epstein, *The Power of Words in International Relations: Birth of an Anti-Whaling Discourse* (Cambridge, MA: MIT Press, 2008).

[64] Christian Bueger and Frank Gadinger, 'The play of international practice', *International Studies Quarterly*, 59:3 (2015); Vincent Pouliot, *International Security in Practice: The Politics of NATO-Russia Diplomacy* (Cambridge: Cambridge University Press, 2010).

[65] Didier Bigo, 'Pierre Bourdieu and International Relations: Power of practices, practices of power', *International Political Sociology*, 5:3 (2011).

[66] Christian Bueger and Frank Gadinger, *International Practice Theory: New Perspectives* (Basingstoke: Palgrave Macmillan, 2014).

[67] Rebecca Adler-Nissen, 'Stigma management in International Relations: Transgressive identities, norms, and order in international society', *International Organization*, 68:1 (2014).

[68] Wiener has presented her concept in two monographs and numerous journal publications, including Wiener, *The Invisible Constitution of Politics*; Antje Wiener, 'Contested compliance: Interventions on the normative structure of world politics', *European Journal of International Relations*, 10:2 (2004); Wiener, *A Theory of Contestation*; Wiener, 'The dual quality of norms and governance beyond the state'; Wiener, 'Contested meanings of norms: a research framework'; Antje Wiener, 'Enacting meaning-in-use: Qualitative research on norms and International Relations', *Review of International Studies*, 35:1 (2009); Antje Wiener and Uwe Puetter, 'The quality of norms is what actors make of it', *Journal of International Law and International Relations*, 5:1 (2009).

[69] This includes, among others, Iain Begg, 'Contested meanings of transparency in central banking', *Comparative European Politics*, 5:1 (2007); Jane Jenson, 'The European Union's citizenship regime: Creating norms and building practices', *Comparative European Politics*, 5:1 (2007); Susan Park, 'The World Bank, dams and the meaning of sustainable development in use', *Journal of International Law and International Relations*, 5:1 (2009); Liese, 'Exceptional necessity'; Ingo Venzke, 'Legal contestation about enemy combatants: On the exercise of power in legal interpretation', *Journal of International Law and International Relations*, 5:1 (2009). Discussions regarding the normative status of the responsibility to protect and its (non-)application in Darfur, Libya and Syria also refer to Wiener's concept of contestation, see Nicola Contessi, 'Multilateralism, intervention and norm contestation: China's stance on Darfur in the UN Security Council', *Security Dialogue*, 41:3 (2010); Jennifer M. Welsh, 'Norm contestation and the Responsibility to Protect', *Global Responsibility to Protect*, 5:4 (2013); Natalie Zähringer, 'Norm evolution within and across the African Union and the United Nations: the Responsibility to Protect (R2P) as a contested norm', *South African Journal of International Affairs*, 20:2 (2013).

approach, therefore, sheds light on the grammar of an emerging literature of norm research examining contestation from a particular perspective. Therefore, we offer a detailed grammatical reading of Wiener's approach, with the objective to assess how this literature accounts for contestation.

Norms as cultural facts

According to Wiener, norms are 'contested by default'.[70] This understanding questions the mainstream 'ontologisation' of norms as stable social facts. Wiener's concept builds on a typology of norm research that distinguishes between behaviourist and reflexive approaches. To her, behaviourist approaches examine social interaction in *reaction* to norms, whereas reflexive approaches investigate social interaction in *relation* to them.[71] Therefore, these approaches differ in their understanding of norm meaning, as the former relies on the assumption of stable norm meaning, whereas the latter treats it as flexible.[72] According to Wiener, the behaviourist perspective represents the constructivist mainstream in norm research. Only reflexive approaches can, however, account for contestation at a conceptual level. Instead of being limited to the regulatory and constitutive dimensions emphasised by behaviourist approaches, Wiener argues that reflexive approaches consider the prescriptive and evaluative dimensions of norms. These approaches focus on 'the meaning of norms that is embedded in social practices'.[73]

Reflexive approaches also overcome the limits of behaviourist conceptions of norms as stable social facts. These approaches reject the premise of a stable ontology of norms, but point to practices of interpretation and contestation instead. The meaning of norms is produced in context.[74] Norms, by consequence, obtain a 'dual quality'. They not only structure social practice (and behaviour) but also derive their meaning from social practice and change their meaning in response to shifts in interpretation. They are structuring and structured simultaneously.[75] In other words, the meaning of a norm depends on its interpretation in context. It is not independent from the instances of its enactment. If norm meaning is, however, not fixed, it will be subject to differing interpretations. A reflexive perspective on norms, thus, implies an analytical focus on contestation as the default option for norms.[76] In contrast to behaviourist approaches, which assume a single stable meaning per norm, reflexive approaches emphasise the ambiguous und underdetermined quality of norm meaning. Contestation is at the theoretical core of any reflexive approach to norms, because meaning cannot be 'fixed' (as a singular and stable meaning) but must remain ambiguous and hence open to (re)interpretation as political process. Wiener concludes that an approach to norms must make meaning-in-use as expressed and established in social practices 'accountable', which implies a focus on diverging interpretations of norm meaning.[77] A grammatical reading of Wiener's approach shows, however, that while the argument begins with an explicit rejection of an ontologisation of norms as facts, the conceptual shift to cultural validation leads to a re-ontologisation

[70] Wiener, 'Enacting meaning-in-use', p. 179.
[71] Wiener, *The Invisible Constitution of Politics*, p. 38.
[72] Ibid.
[73] Wiener, *A Theory of Contestation*, p. 30.
[74] Wiener, *The Invisible Constitution of Politics*, p. 47.
[75] Wiener, 'Enacting meaning-in-use', p. 180.
[76] Wiener, *The Invisible Constitution of Politics*, p. 63; Wiener, *A Theory of Contestation*, p. 27.
[77] Wiener, *A Theory of Contestation*, p. 27.

of norms and a problematisation of contestation. In other words, the grammar of Wiener's approach turns from a reflexive premise to a *de facto* reaffirmation of an understanding of norms as defined by fixed meanings.

To retrace these argumentative turns, it is necessary to address Wiener's understanding of contestation and how it translates into particular conceptual considerations. Wiener's approach relies on discerning different causes of contestation.[78] Firstly, contestation is caused by 'historical contingency' leading to changes in social practice and concomitant changes in norm meaning over time. Secondly, it is caused by 'moving norms beyond the contexts of their political and social origins' that give them a particular meaning in the first place.[79] Thirdly, contestation arises from 'situations of crisis', which limit the time frame for reaching a shared understanding of a norm's meaning. The second type of 'moving norms beyond context' is at the core of Wiener's concept of contestation. The focus of her analytical perspective could be explained by her interest in the establishment of constitutional norms in European integration processes. As Wiener argues, processes of transnational governance are driven by moving norms from domestic to transnational realms due to processes of transnationalisation, globalisation, and internationalisation. As norms move across and beyond boundaries, their meaning changes and becomes ambivalent and contested.

The reason behind this view is a divergence between the various types of norm recognition identified by Wiener. While they are often formally validated through international treaties and written agreements, international norms also require social recognition through practices of interaction in social communities and ultimately rely on 'cultural validation'. 'Cultural validation', in turn, is understood as conforming to individual normative background knowledge.[80] Transnationalisation, as a process of moving norms out of context, creates a gap between these types of norm recognition. A particular norm might be formally validated by international agreements, but still lacks cultural validation because its meaning remains tied to domestic cultural practices.[81] Democracy and the rule of law, for instance, are well established as fundamental norms of the European Union. In discussions about the EU enlargement process, however, German elites framed concerns about the conditions for new members as a matter of compliance with European norms, while British elites tended to frame it as an issue of fairness.[82] International encounters, consequently, may be complicated by discrepancies between 'distinct normative claims'[83] associated with a particular formally validated norm as negotiators draw on different domestic cultural background knowledge and hence interpret norms in a different manner. The gap between formal and cultural validation of a particular norm in transnational contexts implies that its (transnational) social recognition is precarious. Cultural validation constitutes an 'invisible constitution of international politics' hidden beneath the obvious formal validity of norms in written treaties and conventions. By implication, cultural validation (or rather a difference in cultural validation) forms the true origin of norm contestation in Wiener's argument.

The emphasis on the role of background knowledge is in line with previous findings by literature on the role of 'cultural matches'.[84] It remains unclear, however, how culture may assign a stable and

[78] Wiener, *The Invisible Constitution of Politics*, p. 64.
[79] Whereas the 2008 monograph refers to transnationalisation and internationalisation, the 2014 monograph includes the terms transnationalisation and globalisation. See Wiener, *A Theory of Contestation*, p. 56.
[80] Ibid., p. 21.
[81] Wiener, *The Invisible Constitution of Politics*, p. 47.
[82] Ibid., p. 131.
[83] Wiener, *A Theory of Contestation*, p. 56.
[84] Checkel, 'Norms, institutions, and national identity in contemporary Europe'.

singular meaning to a particular norm (though different across cultural contexts). At least implicitly, cultural validation draws on an understanding of culture as the source of fixed intersubjective meaning. The dual quality of norms and the concomitant 'contestation by default' appear to be suspended at the domestic level by culture as the provider of stable meaning, which is inscribed in internalised individual background knowledge. Implicitly, the ontologisation of norms as social facts is replaced by an understanding of norms as cultural scripts enacted by individuals. While individual actors in international encounters rely on different cultural scripts to make sense of a particular norm, each script provides a singular and stable meaning. As a consequence, norms are re-ontologised as cultural facts. According to this grammar, norms structure encounters but are not (re)structured by these encounters.[85] Thus, contestation understood as divergences in cultural validation results from presuming stable and fixed meaning at the level of domestic culture. Due to this shift in Wiener's grammar, the dual quality of norms and the role of encounters in (re)producing norm meaning are, however, lost. The reduction of contestation to a kind of 'context lag' is surprising as Wiener lists two other sources of contestation (contingency and crisis) that question the capacity of cultural practice to 'confine' the ambiguity and indeterminacy of norm meaning.[86] While culture and domestic context may provide more social density and, in turn, be more conductive for normalising a shared understanding of a particular norm,[87] contingency, and crisis point to the pervasive quality of contestation from a reflexive perspective, which is stabilised only gradually by culture or maybe even not at all. Culture and cultural validation presume what they claim to provide: singular and stable meaning internalised by actors as cultural agents, that is, an 'identity of identity'.[88]

Part and parcel of this is also the emergence of an implicitly behaviourist logic of action. By claiming that actors in international encounters refer to their individual normative baggage, Wiener implicitly reverts to a behaviourist level of analysis: 'individuals are prone to carry normative baggage wherever they go'.[89] Such a logic of action has two consequences for norm contestation: Firstly, individuals conform to cultural scripts. Non-conformation to norms, the indeterminacy of norm meaning in novel cases of implementation or a recognition of a lack of knowledge by actors in transnational settings appear as an anomaly. Cultural background knowledge translates easily into individual normative baggage that is enacted without reflexion. Secondly, meaning is not established in encounters between different individuals but is pre-given as cultural practice. Contestation, at this point of Wiener's argument, is a divergence between stable meanings rather than a process (re)constituting meaning. The reflexive focus on encounters as the site of (re)constituting meaning is replaced by an implicitly behaviourist logic of individual actors following fixed cultural scripts. Cultural structures rather than contextual interpretation (that is, meaning-in-use) becomes the source of norm meaning.

As Wiener explains in her profound critique of mainstream norm research, the dual quality of norms requires a reflexive approach centred on contestation. The grammar of Wiener's argument, however, shows how contestation is replaced by cultural practices providing a source for stable and fixed norm meaning. By relying on individual normative baggage as the mechanism to translate culturally fixed

[85] At least, Wiener does not offer an argument to explain how encounters could affect the domestic cultural validation of norms.
[86] Wiener, *The Invisible Constitution of Politics*, p. 64.
[87] We thank one of the anonymous reviewers for clarifying that point.
[88] Zehfuss, *Constructivism in International Relations*, p. 92.
[89] Wiener, *The Invisible Constitution of Politics*, p. 69.

meaning into action, an implicitly behaviourist logic of action is also reintroduced. In turn, the role of encounters and of contestation as dynamic forces driving the constant constitution of norm meaning are dropped from the analysis. Through its focus on cultural practices as sources of norm meaning, the grammar of Wiener's approach eventually turns a reflexive premise of moving beyond the ontologisation of norms into a reintroduction of the role of fixed meaning. As the next section will show, the issues raised here have consequences for the political and normative conclusions that follow from such an understanding of contestation.

Invisible contestation

As our reading so far shows, Wiener's grammar fixes the meaning of norms by a recourse to individualised cultural background knowledge. In this section, we discuss the implications of presuming that cultural validation is invisible, causes conflict, and ultimately leads to a legitimacy problem for transnational (norm-based) governance. The political implications from this presumption result in normative theorising with the objective of containing the impact of contestation.

The shift to invisibility and, by implication, an understanding of contestation as anomalous compared to the normal condition of norms is the result of conceptualising norms as cultural facts.[90] According to Wiener's second condition of contestation, moving norms beyond cultural boundaries and hence beyond social recognition requires individuals to fall back on their cultural 'normative baggage' to make sense of a particular norm in international encounters.[91] Normative baggage is, however, acquired by individual socialisation into and internalisation of specific and different cultural practices of making sense. It is, hence, invisible knowledge of the specific meaning of a particular norm.[92] International encounters between individuals from differing cultural backgrounds, therefore, increase the possibility of norm contestation (that is, diverging interpretations of norm meaning), because the formal and the cultural validation of norms are decoupled. Wiener's analysis demonstrates, for example, that while citizenship is formally enshrined and well-accepted as constitutional norm in the EU, specific interpretations of its meaning nevertheless vary depending on the cultural context. 'Londoners' (that is, individual members of the UK's national political elite) interpret this constitutional norm in terms of an inside perspective (EU as 'other') whereas 'Berliners' associate an outside perspective with it (non-member states as 'others' to the EU). This divergence leads to different views, for example, on border control. 'Londoners' are sceptical towards data collection within the Schengen information system (SIS), because it interferes with civil rights. 'Berliners' on the other hand, are concerned with the safety of external borders and the deficits in police cooperation within the EU.[93] For this reason, the invisibility of cultural background knowledge creates the potential for political conflict.[94] Contestation, thus, is another form of intercultural misunderstandings:

> Once constitutional norms are dealt with outside their socio-cultural context of origin, a potentially conflictive situation emerges. The conflict is based on de-linking the two sets of

[90] In her 2014 monograph, Wiener shifts her argument from the invisible constitution to a distinction between empirical contestation ('contestedness') and contestation as a political practice. However, empirical contestation is still connoted with being unreflected and unintended by political actors. We argue that it is conceptually equivalent to invisibility. See Wiener, *A Theory of Contestation*, pp. 58–62.
[91] Ibid., p. 41.
[92] Wiener, *The Invisible Constitution of Politics*, p. 69.
[93] Ibid., pp. 112–13.
[94] Ibid., p. 147.

> social practices that form the agreed-upon political aspect, on the one hand, and the evolving customary aspect of a constitution, on the other.[95]

The potential for conflict, thus, results primarily from diverging norm interpretations caused by the invisibility of cultural background knowledge. The invisible and conflictive aspects in Wiener's concept, accordingly, are closely linked, but become apparent only in international encounters, when diverging interpretations clash. The encounter, therefore, is merely the moment that renders them visible.

The turn to invisibility suggests an understanding of contestation as the outcome of a 'parallel processing' of a formal norm caused by different cultural scripts. Encounters are presumed to have no direct impact upon meaning. International encounters are primarily arenas in which divergences (or convergences) between different interpretations of a norm become apparent. This, consequently, turns contestation to an anomaly in the 'normal' *modus operandi* of norms. Rather than representing an inherent quality, it is caused by misunderstandings. In accordance with this grammar, conflict could be avoided if cultural background knowledge would not be invisible. Contestation can be transcended if and when social recognition is established at the international or transnational level, that is, if and when a single shared understanding of a norm is established at the level of an international (cultural) community. Contestation, in effect, is understood as the unwelcome side effect of a 'not-yet' state of developing a shared understanding of a norm's meaning.

By critically addressing this 'not-yet' state, we do not insinuate a teleological perspective in Wieners understanding of norms. Rather, we seek to highlight how the grammar of Wiener's approach shifts the notion of contestation towards an understanding of norms as facts founded in *a* shared meaning and contestation as a problematic state of anomaly in this regard. This grammar of contestation implies particular political and normative challenges to the legitimacy of transnational governance and constitutionalism beyond the state. For Wiener, norm legitimacy is a function of social recognition. The norm must conform to the expectations determined by individual cultural background knowledge in order to be legitimate.[96] Experiencing norm contestation in international encounters confronts actors with the lack of social recognition at the transnational level – and hence undermines the legitimacy of transnational governance founded upon and grounded in the norms contested.[97] However, while invisible norm contestation promotes conflict and undermines legitimacy, it can also enhance transnational democratic legitimacy by 'making meaning accountable'. The dual quality of contestation as both potentially challenging and strengthening the legitimacy of norms demonstrates the central role of visibility/invisibility of norm meaning. If contestation is the result of *invisible* cultural validation, the conflictive implications of contestation can be accorded to invisibility rather than contestation *per se*.[98] Consequently, the conflictive and disruptive effects of contestation on democratic legitimacy prevail if they are not addressed politically. Contestation as an empirical practice is rendered as a problem for norm implementation in transnational governance.

[95] Wiener, 'Contested meanings of norms' pp. 3–4.
[96] Wiener, *A Theory of Contestation*, p. 33.
[97] Wiener, *The Invisible Constitution of Politics*, p. 85.
[98] Such a move yet again points to the accidental rather than deliberate character of contestation and to the ontologisation of norms as fixed meaning. Accordingly, Wiener later distinguishes a (empirical and unintended) practice of contestation, a normative principle of contestedness, and a policy instrument of regular contestation. Wiener, *A Theory of Contestation*, p. 58.

According to the grammar of Wiener's approach, disclosing and openly addressing diverging interpretations therefore strengthens the democratic legitimacy of transnational governance.

The politics of contestation

The key to presuming that contestation becomes a problem for successful norm implementation in the transnational realm and concomitantly a problem for the legitimacy of transnational governance, is, grammatically speaking, to equalise contestation with 'invisible contestation'. In line with that reasoning, Wiener's grammar of contestation requires an approach to the normative dimension of norm contestation. If (invisible) contestation is inevitable yet problematic for the legitimacy of transnational governance, normative theorising focuses on the question of how to make contestation visible and productive for democracy:

> While remaining hidden and unregulated, it [differences in cultural background knowledge, HS/HN] can spark debate at best and major political conflict at worst. The better we get at identifying conflicting interpretations, the more likely we are to succeed in designing a pattern for conflict resolution.[99]

To Wiener, 'agonistic institutions' make contestation visible and 'ensure ongoing dialogue and infinite negotiation'[100] of norm meaning. Agonistic institutions grant access to 'transnational cultural practices'[101] and by doing so generate legitimacy for transnational governance by closing the gap between formally recognised norms and cultural validation. Unlike deliberative institutions, agonistic institutions seek to avoid a sedimentation of norm meaning and instead keep its fixing an open-ended and continuous process.[102] The expectation then is that some sort of 'regulated contestation', that is, visible contestation in agonistic institutions, limits the disruptive consequences of invisible contestation.[103] This resonates with critical constructivist and poststructuralist arguments on the undecidability of norms, the underdetermined character of normative meaning, and the role of practical reasoning, all of which point to the interpretation of a norm's meaning as a matter of politics.[104] However, the normative turn towards agonistic institutions as a result of considering empirical contestation as 'invisible' underlines and amplifies a 'politics of reality' implicit in Wiener's grammar, which reasserts the understandings of norms as shared understandings.

The benefits of agonistic institutions lie in enabling dialogue and deliberation on diverging interpretations.[105] Dialogue and deliberation, in turn, are expected to promote social recognition

[99] Wiener, *The Invisible Constitution of Politics*, p. 70.
[100] Ibid., p. 211. Wiener develops the notion of agonistic institutions with reference to the political philosophy of James Tully. See James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995); James Tully, 'The unfreedom of the moderns in comparison to their ideals of constitutional democracy', *The Modern Law Review*, 65:2 (2002).
[101] Wiener, *The Invisible Constitution of Politics*, p. 204.
[102] Ibid., p. 211.
[103] Wiener, *A Theory of Contestation*, p. 59.
[104] Jacques Derrida, 'Force of law: the "mystical foundation of authority"', in Drucilla Cornell, Michel Rosenfeld, and David Carlson (eds), *Deconstruction and the Possibility of Justice* (London; New York: Routledge, 1992); Kratochwil, *Rules, Norms, and Decisions*; Martti Koskenniemi, 'Miserable comforters: International Relations as new natural law', *European Journal of International Relations*, 15:3 (2009).
[105] Wiener, *The Invisible Constitution of Politics*, p. 209.

and cultural validity. They regulate contestation by replacing membership in a cultural community as the source of validation.[106] Contestation as the source of political conflict is replaced by transnational cultural practices, which establish a singular shared understanding of norms as cultural facts rather than mere formal agreements. This 'evacuation' of contestation on a normative level underlines the 'politics of reality' implied in the grammar of Wiener's approach. Assuming political conflict to be resolvable by dialogue and consensus as a matter of principle raises the question of how to accommodate contestation if diverging and contrary political values are involved. Any dialogical concept of politics, ultimately, relies on the option to identify a common, that is, intersubjective denominator between different political interests.[107] Only the normative reliance on a dialogical understanding of politics makes a mere disclosure of contesting interpretations sufficient to limit political conflict and to generate social recognition at the transnational level. In turn, the normative force of 'access to contestation' is based on this understanding of politics. Such an understanding of politics marginalises an understanding of norms as *essentially* contested concepts involving contradictory interpretations of a particular norm tied to irreconcilable values.[108] This would also include a more antagonistic understanding of politics and of contestation that is centred on the role of political decisions, responsibility and power:

> For if constructivism is fundamentally stating that the present is not determined by the nature 'nature' of things, then it is analytically akin to power analysis which is always about a counterfactual and how things could have been different.[109]

Although Wiener's approach stresses the contextual and temporal character of resolving contestation by implying that the social recognition of norms can be facilitated in agonistic institutions if only temporarily, the role of intersubjectivity in fixing meaning becomes manifest. However, 'reliance on intersubjectivity is in itself political'.[110] Rather than opening up a perspective on power implied in the dual quality of norms, the recourse to agonistic institutions ultimately emphasises an understanding of norms relying on the normalising effects of fixing meaning.[111]

Reflecting Wiener's turn to normative theorising, thus, is highly relevant for the purpose of our grammatical reading. Given that contestation is an empirical practice, how does it relate to the intersubjectivity of norms? Despite the turn to cultural facts with a fixed meaning in her grammar, Wiener's analysis also offers opportunities to think about (empirical) norm contestation as a normal and not necessarily disruptive quality of norms. Consider the category of 'both/and' that is introduced to account for the empirical finding that 'Brusselites' (political elites on the European level) accept contrasting and ambiguous interpretation of a particular norm's meaning at the same

[106] Ibid., p. 204.

[107] Chantal Mouffe, *Über das Politische: Wider die kosmopolitische Illusion* (Frankfurt am Main: Suhrkamp, 2007).

[108] For a broader discussion of 'essentially contested concepts' in political theory see, *inter alia* William E. Connolly, *The Terms of Political Discourse* (Oxford: Blackwell, 1993); Alasdair MacIntyre, 'The essential contestability of some social concepts', *Ethics*, 84:1 (1973); Norman S. Care, 'On fixing social concepts', *Ethics*, 84:1 (1973); Christine Swanton, 'On the "essential contestedness" of political concepts', *Ethics*, 95:4 (1985); David Collier, Fernando Daniel Hidalgo, and Andra Olivia Maciuceanu, 'Essentially contested concepts: Debates and applications', *Journal of Political Ideologies*, 11:3 (2006); Kenneth Smith, 'Mutually contested concepts and their standard general use', *Journal of Classical Sociology*, 2:3 (2002).

[109] Guzzini, 'A reconstruction of constructivism in International Relations', p. 150.

[110] Zehfuss, *Constructivism in International Relations*, p. 141.

[111] For a similar argument on the inherent normativity of Wiener's as well as other's understanding of contestation see Jonas Wolff and Lisbeth Zimmermann, 'Between Banyans and battle scenes: Liberal norms, contestation, and the limits of critique', *Review of International Studies*, 42:3 (2016), pp. 513–34.

time – as opposed to national elites that rather show 'either/or' patterns of interpretation.[112] If the meaning of a particular norm such as European citizenship is not limited to connote 'either', an 'outside' perspective securing external borders 'or' an 'inside' view at enabling travel and civil rights but can be both/and, there might be a role for norms in politics even if interpretations diverge. The finding indicates that diverging norm interpretations *per se* do not induce conflict. Rather, a diffuse set of different meanings-in-use appears at least to be not disruptive to social interaction.[113] Going even further, with reference to the tendency to formulate treaty language on a 'considerably general level'[114] and to consider one type of norms as 'organising principles',[115] Wiener points to potential benefits of ambiguity in norm meaning. As 'organising principles' norms provide a basic framework that reconciles rather than precludes diverging interpretations. For instance, the responsibility to protect, one of the examples mentioned by Wiener, continues to be highly contested despite its formal endorsement by the United Nations. Far from becoming an international legal norm, however, it still provides a rather stable procedural framework for explicating contestation on the issue for more than a decade now.[116] Its ambiguity, therefore, enables rather than disables productive dialogue on its meaning. Nonetheless, these findings raise important questions at both the theoretical and empirical levels that illuminate a more complex role of contestation in practice: How do transnational elites handle ambiguous and diffuse norm meanings in routine cases of norm application? Do encounters of diverging interpretations imply 'blind' conflict, or do actors reflect on and address the differences in norm interpretation? Are they possibly aware that specific conflicts may revolve around different understandings of a norm but consider this a worthy political issue? What follows from the insight that international norms apparently require formal establishment in written treaties, which, at the same time, enable contestation and allow for interpretations of their meanings through rather general formulation? Instead of employing the empirical observation of contestation in international encounters as the basis for theorising how norms work in the light of contestation, the grammar of Wiener's concept implicitly problematises contestation as a source of conflict for the proper implementation of norms and the legitimacy of international governance.

Thus, the grammar of Wiener's concept of contestation ultimately evacuates contestation from our understanding of norms. The argument starts with a theoretical premise of norms as contested 'by default', but as our reading reveals, the grammar problematises contestation and transforms it into a disruption. At the same time, at the normative level, containing contestation through dialogue alleviates these disruptions and enhances transnational legitimacy. Given that even fundamental and longstanding norms of European transnational governance are contested among core actors, such a shift is puzzling. Introducing a normative perspective on how to 'de-problematise' contestation, instead of conceptualising how norms work with and maybe reveals how ultimately the grammar of contestation prevents an engagement with contestation as an empirical fact of norms in practice.[117]

Conclusion

The article discussed the challenges of conceptualising contestation in norm research by applying a grammatical reading to Antje Wiener's approach to norm contestation. Empirical observations of

[112] Wiener, *The Invisible Constitution of Politics*, pp. 149–50.
[113] Ibid., p. 99.
[114] Wiener, *The Invisible Constitution of Politics*, p. 211.
[115] Wiener, *A Theory of Contestation*, p. 60.
[116] Ibid., p. 66.
[117] This also holds true for the potential of organising principles and 'regular contestation' as they explicitly tend to normalise contestation.

norm contestation challenge the mainstream view on norms as social facts based on a (single and singular) shared understanding. An emerging body of literature in norm research has turned to contestation not only as an empirical phenomenon, but also as a premise for theorising norms. These approaches in general and Wiener's approach in particular represent a turn in norm research, because they offer an explanation of why norm meaning can be stable and contested at the same time. Wiener's approach to contestation 'by default', as we have argued, is paradigmatic for its explicit consideration of contestation as the starting point for theorising norms. A grammatical reading of this approach offers insights into how norm research accounts for contestation as a way of 'theorizing with the unfixity'[118] of norm meaning. It provides an analytical perspective on the politics of constituting norm meaning.

Our grammatical reading shows that Wiener's approach ultimately treats contestation as an anomaly to norms. We identified a number of grammatical shifts that eventually transform the reflexive starting point into an understanding of norms mostly compatible with the mainstream perspective of shared understandings. First, our reading identified a turn to re-ontologise norms as cultural facts. By referring to 'cultural background knowledge' as a source for validating norm meaning, the approach relies on a concept of culture as stable and uncontested. By considering culture as source of norm validation, Wiener's approach implicitly re-ontologises norm meaning as a stable and uncontested cultural fact. Second, this re-ontologisation has political consequences because it equates contestation with conflict in a disruptive sense. As Wiener argues, cultural background knowledge remains largely invisible in transnational encounters. Contestation, thus, can be understood as a source of misunderstanding due to a lack of overlapping cultural matches. This understanding is, however, likely to generate legitimacy problems in the context of international norms. Due to the absence of overlapping cultural validations, contestation becomes a disruptive force undermining acceptance, compliance, or normative consent about norms. Since contestation is therefore made a political problem, the third and final conceptual turn in Wiener's approach is to consider possible 'solutions' for contestation. Since Wiener identifies invisibility as the primary source of the delegitimising power of contestation, the approach turns to 'agonistic institutions', which promote constant dialogue regarding the meaning of norms as a normative solution to the 'problem' of contestation. Making contestation visible, however, relies on a liberal understanding of political conflicts as both disruptive and solvable through consensus and dialogue rather than constitutive of the political. Developing transnational institutions enabling dialogue and thus rendering contestation visible are then considered to be conductive for transnational legitimacy. In doing so, however, contestation as an inherent quality of norms is replaced by an understanding that ultimately marginalises contestation conceptually by treating it as an obstacle to developing shared understandings.

Our reading demonstrates that norm research has been reluctant to conceptualise contestation 'all the way down' yet. Instead, even an approach that places contestation as its analytical starting point ultimately reverts to an understanding of norms as shared understandings. Furthermore, it engages in normative theorising with the aim to regulate contestation. Our grammatical reading demonstrates that while contestation is an empirical matter of fact, it is not easily integrated as a concept into norm research. In this regard, it demonstrates the persistence of a mainstream 'middle ground' conception of norms as shared understandings. Norm research, thus has yet to meet the challenge of contestation. This challenge is twofold: First, at the theoretical level, contestation requires norm research to 'theorise with unfixity'. To consider all of the implications, a reflexive perspective on norms, however, must conceptualise contestation 'all the way down' rather than to rely on the 'safe'

[118] Epstein, 'Constructivism or the eternal return of universals in International Relations', p. 501.

ground of fixed norm meaning. Second, at the empirical level, norm research must consider ways to account for a productive role of contested norms in international relations. If contestation is an empirical matter of fact, the role of norms in international politics might rely on a mechanism that does not involve shared understandings but normative contest and the struggles associated with it. This double challenge, arguably, confronts norm research with the question of whether it can adapt its understanding of norms to contestation or whether contestation as an empirical observation poses a challenge to the foundations of norm research that ultimately cannot be resolved by integrating contestation into the 'hard core'[119] of its concept of norms.

At first sight, our grammatical reading of Wiener's approach seems to point to the latter. We have hinted at poststructuralist and critical constructivist perspectives that approach norms as specific cases of broader concepts such as discourse, governmentality, or orders of worth.[120] However, these perspectives also introduce novel concepts into norm research, a move that ultimately raises the question of what actually the point of reference for norm research should be. Thinking about contestation 'all the way down' therefore points to fundamental issues not only regarding the concept of norms, but also regarding the disciplinary identity of norm research. This kind of thinking might eventually lead to the end of norm research as we know it. However, our findings do not necessarily question the productivity of conceptualising norms as shared understandings in terms of heuristics. Instead, our starting point was merely to identify a tension between an empirical observation and its conceptual treatment. Therefore, our findings could also be interpreted as demonstrating that focusing on intersubjective sharedness rather than contestation is what defines norm research. Such a view would also be in line with many contributions arguing that norms, by definition, have to be shared. Arguably, the question of how to cope with contestation might eventually be one of disciplinary identity rather than one of conceptual design.

At the same time, however, the theoretical perspective on contestation not only shapes the discipline's understanding of norms as a concept, but also determines the understanding of norms in empirical practice. Theorising contestation, then, is not confined to abstract musings on the ontology of norms, but also constitutes the empirical realities scholars seek to understand. Therefore, the 'politics of reality' is also a 'politics of empirical analysis' rather than merely a matter of disciplinary identity. A perspective of contestation 'all the way down', therefore, could avoid an *a priori* definition of fixed norms (such as the prohibition of torture) for studying norm contestation, but focus on the normativity of norm claims (such as protecting human rights versus national security). While a focus on fixed norms emphasises the normality of political practices, a focus on contestation underlines the very normativity of these practices. Assuming that contestation is a constituting part of norms, such a theory of contestation would also open up a perspective on the role of norms in international politics beyond shared understandings, for example, the role of norms as symbols around which identities are shaped.[121] Thus, contestation 'all the way down' has a potential to improve IR's understanding of 'how norms matter'[122] by moving beyond the conceptual limitations implied in the mainstream premise of norms as shared understandings.

[119] Imre Lakatos, *The Methodology of Scientific Research Programmes: Philosophical Papers Volume 1* (Cambridge: Cambridge University Press, 1978), pp. 48–9.

[120] See our earlier discussion on the various perspectives on contestation in constructivist norm research.

[121] For example, Renner's account of reconciliation, in Renner, *Discourse, Normative Change and the Quest for Reconciliation* or Methmanns examination of climate change discourse, in Methmann, '"Climate protection" as empty signifier' could be understood as applying norms in that direction.

[122] Kratochwil, 'How do norms matter?'.

Therefore, while our argument ostensibly focuses on the findings of a grammatical reading of Wiener's approach to norm contestation, the implications are much broader and bigger. It addresses not only how norm research can account for contestation in theorising norms, but ultimately points to the question of what constitutes the programmatic core of its identity. While we do not presume a need for pessimism regarding the ability of norm research to address the issue of norm contestation, our findings demonstrate that further conceptual work seems necessary in the future. This will certainly affect how norm research conceptualises norms and ultimately also change norm research. Keeping the meaning of norms in norm research contested will, however, help to drive theoretical innovation and to generate new empirical insights on how norms matter.

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