

The Dual Quality of Norms and Governance beyond the State: Sociological and Normative Approaches to ‘Interaction’

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ABSTRACT *This essay develops a critique of modern constructivist approaches to norms in international relations theory. It distinguishes between a behaviourist and a societal perspective on norms. The former explains compliance with norms and/or norm diffusion via the logic of appropriateness and the logic of arguing, respectively, the latter understands divergence in normative meaning via the logic of contestedness. Using Habermas’s approach to facts and norms as a framework, the article discusses the possibilities of legitimate governance based on core constitutional norms such as democracy, the rule of law and fundamental and human rights and their role in contexts beyond the modern nation-state.*

KEY WORDS: Norms, constructivism, governance, Habermas, legitimacy

Introduction

That norms matter for politics is a widely shared observation. How norms matter is, however, highly debated among social scientists and lawyers alike. As Nicholas Onuf notes, ‘it is hard to imagine any social scientist, even the most ardent methodological individualists among us, arguing with Searle’s general claim that social facts *are* facts. Yet *this* fact tells us nothing about intentions as such, much less about their collective form or other properties’ (Onuf 2002: 227). This essay argues that, despite a widely shared agreement on the social ontology of norms, conceptual differences on how norms ‘work’ prevail.¹ Indeed two perspectives can be distinguished according to the quality they assign to norms, considering them as either stable social facts outside agency or flexible and interrelated with agency. They differ in their choice of dependent variable, with an action theoretic *behaviourist*

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perspective seeking to explain state behaviour (Koh 1997; Checkel 2001a), and a reflexive *societal perspective* studying normative meaning (Albert et al. 2000; Wobbe 2003; Barnett 1999; Guzzini 2000). One perspective studies behaviour *in response to* norms, thereby stressing the structural quality, the other considers interventions *in relation with* norms.

The perception of norms as either stable or entailing a dual quality marks a significant conceptual difference with potentially interesting consequences for politics and policy towards legitimate governance beyond the state. It will be explored in more detail below. By illuminating conceptual differences on norms, I highlight their respective and distinct impact on the substance of governance beyond the state. Most importantly, the article addresses the question of how normative meanings that have been generated in transnational arenas, say during treaty negotiations, change during the transfer from the transnational to the domestic political arena. While both perspectives on norms would agree on the key input of 'interaction in context' as the intervening variable which helps explain action or understand how different meanings have become possible, it is important to note their respective and considerably different conceptualisation of 'interaction'. Different approaches develop the concept of interaction based on behavioural sociology (Morris 1956), work with the communicative element of deliberation (Ulbert & Risse 2005), or conceptualise contestation as a condition of legitimate governance (Dahl 1971). This article studies the link between agreements about norm types such as human rights, minority rights, democracy or non-intervention in transnational arenas, and, the interpretation of their meaning in different domestic contexts. It is argued that first, if and when contested, norms are likely to spark conflict; however, that secondly, contestation is at the same time a key condition for democratic governance. While contestation is a process which creates conflict and coordination problems for behaviourist scholars, it is a necessary condition for establishing legitimacy from the perspective of democratic constitutionalism.

I propose linking the literatures on compliance (Chayes & Chayes 1995; see Zürn & Joerges 2005 for a good summary) and democratic constitutionalism (Tully 1995; Weiler 1999) to develop an inroad into research on democratic governance beyond the state in the light of the changing boundaries of the modern state. The argument developed in this article contends that the challenge for research on compliance with norms consists in how to assess the problem of conflict and the possibility of legitimacy as two different yet equally important aspects of democratic governance. Building on insights from democratic theory, I suggest that both come to the fore once norms are contested (Wiener 2004). In the absence of modern communities which offer a constitutional framework to regulate, maintain and enforce the fundamental norms, organising principles and standardised procedures that rule modern politics, governance beyond the state analyses require a different unit of analysis than the modern state (Zürn 2005: 6). While this observation is not particularly new, the search for an alternative unit of analysis is still on.² In concluding, the article sheds some light on the role of transnational arenas as potential units of analysis. In a global context, where the survival of core modern constitutional norms such as the

rule of law, democracy, human and fundamental rights and citizenship rights (Rosenfeld 1994) is assumed despite the absence of modern political, constitutional and social boundaries, legitimacy and conflict resolution depend increasingly on transnational arenas. As advanced constitutionalised contexts such as the European Union (EU) and the World Trade Organisation (WTO) combine relatively sophisticated legal frameworks with emerging fundamental norms, organising principles and standards of interaction, these transnational arenas receive considerable interest from researchers of various disciplinary descent. The interest has so far led to a predominant focus on studying and developing institutional capacities in international organisations to ensure compliance (Koh 1997; Checkel 2001a; Joerges & Zürn 2005).

The argument proceeds from the assumption that norms entail a dual quality: that is, they are both structuring and socially constructed through interaction in a context. While stable over particular periods, they always remain flexible by definition. The essay is organised in two sections. The first discusses three approaches to norms distinguished according to the logics of appropriateness, arguing, and contestedness. The second argues that Habermas's distinction between 'facticity and validity'³ plays a central role in the discussion of legitimate governance beyond modern boundaries, and elaborates on the societal approach to norms with reference to transnational arenas.

How Do Norms Work? – Three Logics

Norms as Facts: The Logic of Appropriateness

In the international relations literature, Peter Katzenstein and his collaborators have offered the most influential definition of norms as a way 'to describe collective expectations for the proper behaviour of actors with a given identity' (Katzenstein 1996: 5). Norms are considered as 'spontaneously evolving, as social practice; consciously promoted, as political strategies to further specific interests; deliberately negotiated, as a mechanism for conflict management; or as a combination, mixing these three types.' (Katzenstein 1996: 21) Subsequently domestic institutional trajectories, learning capabilities of elites, and framing activities of non-state actors are considered as key variables for the analysis of norm implementation (Sikkink 1993, Keck & Sikkink 1998, Risse et al. 1999, Checkel 2001a, Finnemore & Sikkink 1998). While this constructivist move has brought insights from organisational sociology to bear in international relations theory (Finnemore 1996), it is equally important to note that 'modern' constructivists (Katzenstein et al. 1998) made a conscious decision to eliminate the uncertainties of culture and cognition evoked by the notion of morality. As Katzenstein points out, for example, 'one of the main difficulties in making the sociological approach ... attractive for scholars of international security lies in the intuitive equation of the concept of norm with morality'. He therefore prefers to focus 'primarily on the analysis of *regulatory norms* (defining standards of appropriate behaviour) and *constitutive norms* (defining actor identities);' touching 'less directly on *evaluative norms* (stressing

questions of morality) or *practical norms* (focusing on commonly accepted notions of “best solutions”) (Katzenstein 1996: 5).

Subsequently, the constitutive role of norms stands out for this research perspective. ‘Socially shared ideas – be it norms (collective expectations about proper behaviour for a given identity) or social knowledge about cause-and-effect relationships – not only regulate behaviour but also constitute the identity of actors’ (Risse 2000: 5). In addition, they are constitutive for societal patterns in world politics such as regimes and/or epistemic communities (Haas 1992; Adler 1997). This perspective follows the early sociological distinction between norms and values which holds that ‘values are individual, or commonly shared conceptions of the desirable, i.e. what I and/or others feel we justifiably want – what it is felt proper to want. However, norms are generally accepted, sanctioned prescriptions for, or prohibitions against, others’ behaviour, belief, or feeling – or else. *Values can be held by a single individual, norms cannot*’ (Morris 1956: 610; emphasis added). This approach attaches a structural role to norms as prescriptive, emphasising that ‘norms must be shared prescriptions and apply to others, by definition’. Unlike values which are individually held, norms operate within a social environment. They are defined by norm setters for norm followers to obey. ‘Values have only a subject – the believer – while norms have both subjects and objects – those who set the prescription, and those to whom it applies’ (ibid.: 610). This analytical separation between facticity and validity has been adopted by students of international relations, who thereby express a preference for conceptualising norm following as habitual rather than reasoned.

This behaviourist perspective focuses on the ‘logic of appropriateness’ (March & Olsen 1989: 23). It considers the impact as predominantly structural and less as relational. The stability assumption of the behaviourist perspective manifests itself in three key observations. First, it implies that norms entail recognisable and hence enforceable prescriptions for behaviour (Checkel 2001b: 180, 182). Subsequently, and secondly, it recognises no significant difference in the impact of legal and social norms on human behaviour. Finnemore stresses the issue of similarity rather than difference between social and legal norms, stating ‘what distinguishes legal norms from other norms is simply not clear’ (Finnemore 2000: 701, 703). Third, it means that while the type of norm, say human rights, environmental standards or minority rights can be debated, contestation of a norm’s meaning, say between norm setter and designated norm follower, between different groups of norm followers, or over time, remains analytically bracketed.

It follows that norm implementation is likely to be successful in contexts such as the ‘OECD world’ or, more generally speaking, the group of ‘civilized states’ which share universally held values. Outside such specific community environments, strategic action is required to enforce norm implementation. Studies on human rights policy, the strategic action of ‘norm entrepreneurs’ (Finnemore & Sikkink 1998: 893, 895; Locher 2002) and diffusion through elite learning sustain the point. While socialisation is considered as a key factor for

The quality of norms is considered as stable. Norms are studied as social facts.

Legal validity is unproblematic, and social facticity, once established, is taken as equally stable.

Proposition: The social facticity of norms structures behaviour; actors follow the *logic of appropriateness*.

Figure 1. The logic of appropriateness.

compliance with norms,⁴ the prevailing reading of socialisation works with the behaviourist assumption that actors are socialised to fit a given identity. Analytically, ‘creating membership in a society where the intersubjective understandings of the society become taken for granted,’ (Johnston 2001: 494) follows a monocausal concept of socialisation. Subsequently, policy strategies fail to appreciate the interactive dimension of norms. As Johnston observes, for example ‘the goal of diplomacy is often the *socialization of others* to accept in an *axiomatic way* novel understandings about world politics’ (Johnston 2001: 489; emphasis added).

To overcome this impasse, the origins of identities and other normative factors need to be better theorised. As Finnemore and Sikkink emphasise, ‘little theoretical work has focused on the process of “norm building”’ (Finnemore & Sikkink 1998: 896).⁵ If the assumption that norms are conceptualised as both stable and flexible holds, and they hence entail historically contingent meanings, identifying their origin will disclose important information. While at a particular point in time norms may, for example, be defined as stable, they do ‘evolve over time’ (Klotz 2001: 229). They are hence subject to change. Absent social process, norms neither exist nor are they, therefore, visible. The behaviourist perspective circumvents intersubjectivity as a practice which produces change in all participating actors (and institutions) by assuming that the new coming ‘others’ will be persuaded to share the dominant validity. Yet, as Dallmayr correctly stresses,

genuine dialogue or consensus requires a reciprocity of understanding, in the sense that it is not only up to others (‘them’) to understand ‘our’ perspective, but it is equally up to ‘us’ to grasp things from ‘their’ perspective. Seen in this light, the so-called ‘fusion of horizons’ postulated by Gadamer does not signify the assimilation of others to ‘us’, but rather the growing ‘convergence of our *and* their perspectives through a process of reciprocal learning. (Dallmayr 2001: 341)

However, exploring the construction and change of norms within their socio-cultural contexts conveys one part of the story, while studying the role of norms as causing rule-following behaviour conveys the other. Both perspectives shed light on the dual quality of norms as stable and structuring, on the one hand, and flexible and constructed, on the other.

Norms as Disputed Facts: The Logic of Arguing

The behaviourist perspective which has been summarised and reviewed in the previous section has been extended towards incorporating norm-validation. By problematising normative validity, what I will call the 'arguing approach', adds the assumption that validity cannot be taken for granted but must be established through deliberation among norm setting actors (Risse 2000; Mueller 2001, 2004; Ulbert & Risse 2005, Deitelhoff & Mueller 2005). Drawing on Habermas's theory of communicative action, Risse and Mueller and their respective collaborators bring shared understandings about truth, moral virtues and ethical concerns into processes of negotiation previously conceptualised as driven by the logic of consequentialism. In forwarding a 'triadic' instead of a 'dyadic' approach to bargaining, this approach stresses the role of shared external reference frames as a 'mutually accepted external authority' for the negotiating actors (Ulbert & Risse 2005: 343). These reference frames are assumed to be created prior to the negotiation process and function as guide posts in the process of deliberation over norm validity. This assumption emphasises the input of shared life-world experiences or communities in which socio-cultural references are constructed as key resources for norm validation in transnational or supranational contexts (Mueller 2004).

The conceptual opening towards norm contestation conveyed by the arguing approach thus brings in a focus on vertical norm contestedness. That is, empirical studies focus on deliberation with a view to validating the preferred type of norm within a transnational context. While agreeing with the key question of the behaviourist perspective, namely why do actors comply, this approach emphasises the additional dimension of norm validation through supranational negotiation. Nonetheless, beyond validation the logic of arguing fails to apply. At this point, strategic action towards persuasion according to the logic of appropriateness and the logic of consequentialism based on theoretical bracketing (stable norm validity) kicks in. Contestation hence remains an isolated action within an international arena that is brought in to explain compliance. This approach facilitates a partial opening towards a societal dimension. Life-worlds that have been constituted beyond the boundaries of domestic political arenas are considered as units which enhance the potential for shared identities. Following the logic of appropriateness they subsequently also increase the potential for recognising shared norms, principles and values. The innovative step brought in by the arguing approach involves a focus on the contestedness of norm types. That is, normative meaning is considered to evolve from different cultural backgrounds; arguing about norms hence brings different and potentially conflicting preferences of the norm setting negotiators to light.

In sum, in addition to the sociologically observable empirical fact that a norm matters, this research shifts the focus from normative facticity towards validity. In the process, it successfully extends the behaviourist perspective towards the dimension of contested normative legitimacy. The assumption is that, in order to be powerful, norms must acquire a degree of shared legitimacy for a significant group of negotiating actors. The shared validity of norms is established through communicative action

The quality of norms is stable, yet norm types are contested.

In international environments, the social facticity of norms remains to be established through arguing.

Once it is established, it is stable and structures behaviour.

Norm setting follows the logic of arguing, norm following occurs according to the logic of appropriateness.

Proposition: The hierarchy of norm types is contested; it therefore requires assessment based on the *principle of communicative action*.

Figure 2. The logic of arguing.

during which different socio-culturally determined preferences are adapted and changed based on the willingness to be persuaded by the better argument. Norm validation then is a result of deliberation in transnational or supranational negotiations. The stronger the shared frame of reference, the more likely is the successful implementation of the norm. Whether or not, and if so to which degree, the thus validated norm is recognised, implemented and accepted in domestic political arenas, remains to be established. These questions are taken up by subsequent projects which apply the modern constructivist research tool-kit – including norm diffusion by learning, persuasion, framing, logics of action and so forth. That is, the action theoretic arguing approach introduces a conceptual shift from a more structurally oriented behaviourist perspective to a more normatively conscious logic of arguing. It inserts a new logic of behaviour and the dimension of contested normative meaning with the goal of explaining or governing state behaviour in relation to specific norm types.

While norm contestation in transnational arenas relaxes the stability assumption of the behaviourist perspective, the analytical potential to capture compliance in a long-term perspective remains limited in two ways. First, according to the arguing approach norms are contestable exclusively on the supranational level, i.e. in international or transnational bargaining situations. Once a norm is agreed within this context the stability assumption kicks in. While subsequent disagreement about norm validity in domestic contexts is considered, such situations are identified as ‘misfits’ that require adaptation through strategic action aimed at persuading designated norm followers (Boerzel & Risse 2000). The expected result is that norm followers will be persuaded, not the *revalidation* or change of norms. Strategic action in the process of norm implementation does not exclude coercion (Payne 2001). As Checkel puts it, ‘I define persuasion as a social process of interaction that involves changing attitudes about cause and effect in the absence of *overt coercion*’ (Checkel 2002: 2). This take on persuasion raises doubts about the analytical rigour with which the concept of mutual constitutiveness is applied.

Secondly, the flexible quality of norms remains limited to contestation over the type of norm in the supra- or transnational contexts of elite negotiations, i.e. which

norm is valid – labour standards, say, or human rights, minority rights or citizenship rights. The contestation over the meaning of these norms remains an unknown factor. Other domestic or regional contexts in which norms stand to be accepted by social groups after implementation through policy adaptation and/or innovation slide out of sight. Yet, as the argument advanced by this article would hold, it is precisely this norm transfer that enhances the possibility of contested normative meaning as an unintended consequence of norm diffusion. In such situations, contestation involves the possibility of (a) dialogue and deliberation and subsequent agreement (logic of arguing); (b) dialogue and disagreement; (c) disagreement and conflict among negotiating elites, and (d) contentious action in the respective elite negotiators' root cultural spheres (Tarrow 1989: 12, 13). Norm transfer between different domestic, international, or transnational political arenas⁶ thus emphasises the time-place condition for normative validity. Successful norm implementation is not necessarily the end of the story. Norms are often renegotiated in subsequent policy processes (Locher 2002: 74, 77, 84) drawing on distinct socio-cultural trajectories that reflect and create normative meaning based on different cultural experiences and representations (Eder 2004).

The Limits of Validation and Legitimacy

While constructivists have established the regulative impact and the constitutive role of norms for actors' identity and interests, we still know little about the construction and impact of normative meaning. More than two decades ago, Kratochwil noted that social scientists should 'inquire into the conditions and types of rule-governed behaviour and investigate the *emergence, development, and decay of norms* and the incentives for compliance and non-compliance' (Kratochwil 1984: 690; emphasis added). By bringing in sociology, the behaviourist perspective has introduced two action theoretic logics, i.e. the logics of appropriateness and arguing. However, both do ultimately consider the stable quality of norms or the facticity dimension as the make or break point for the power of norms, establishing whether norms are followed by a group of actors who consider them as either appropriate or legitimate. The majority of compliance studies referred to the 'logic of appropriateness' which had been derived from March and Olsen's work in organisation sociology that had initially been applied to institutions (March & Olsen 1989: 25–26). Drawing on Habermas, normative legal theories were later incorporated by including the 'logic of arguing' (Risse 2000; Mueller 2004). Overall, the separation between norms and values came at the cost of eliminating agency from the process of norm origin and change.

While norms may appear as stable over a prolonged, albeit limited, period of time, drawing the analytical conclusion of norms as stable social facts implies ontologising norms. That is, norm types are considered as ontologically primitive units of analysis which entail no distinct elements other than those ascribed to that type. The analytical shift from the phenomenological to the conceptual level has occurred almost unnoticed. It entails the risk of extending the much criticised billiard ball

metaphor – which has at one time informed a Hobbesian concept of the state in international relations theory – to norms.⁷ This development raises questions for further studies. Two insights stand out. First, as observable units, norms not only cause or structure behaviour, they also evolve in relation with social interaction. Both processes need to be considered, if norm implementation and norm resonance are at stake. The causal impact reflects the facticity of norms as an observable and arguable disputed social fact, for example, the rising number of human rights claims in global politics (Jacobson 1996; Soysal 1994). In turn, the relational impact sheds light on the perceived validity of norms, for example, why the death penalty is considered as legitimate in some democracies but not in others.

Depending on whether compliance is understood as implementing rules, on the one hand, or as accepting rules as legitimate, on the other, the extent to which norms work is defined differently by various strands of constructivism. While some stress the mutual recognition of a norm's validity as a *sine qua non* for normative legitimacy, others would include the possibility of applying coercion to achieve compliance. In the latter case, compliance is more correctly considered as an instrument of smooth governance rather than a matter of good governance. The preference for research that seeks to pursue the organisational rather than the substantive impact of norms may prove particularly problematic in transnational political arenas. It is in these arenas where the assumption that all involved actors share perceptions of norm validity is most likely to produce misleading conclusions. The trap is twofold. First, the validity perception is likely to vary among actors according to their context of origin from which individually held normative baggage evolves, i.e. the respective domestic arenas. Secondly, assumptions about normative legitimacy that is derived through deliberation, i.e. the process of arguing, do not hold if the resort to coercion is not excluded in principle.

The Logic of Contestedness: Between Facts and Norms

Other perhaps more 'consistent'⁸ constructivist approaches following the linguistic turn in the wider social sciences have emphasised the emergence, change and decay of norms and their meaning (Kratochwil 1984). They stressed a dialectical perspective on norms as evolving through practice and in context (Barnett 1999; Weldes & Saco 1996; Milliken 1999) applying both Wittgenstein's speech act theory (Fierke 1998) and Habermas's communicative action theory (Crawford 2004: 22–25, Bohman & Rehg 1997). This societal perspective argues that while norms may be considered as valid and just under conditions of interaction in one cultural context, that perception cannot be generalised. That is, normative validity cannot be assumed as stable in different political arenas without providing empirical evidence. This perspective offers a platform from which to elaborate on the dual quality of norms in two ways. First, by expanding the process of norm validation it elaborates on the contestation of norms. Secondly, by raising the issue of legitimacy it places norm construction and contestation within a wider societal context. While the first aspect has been raised by the arguing approach, the second aspect stands to be appreciated

more fully by students of international relations. It requires a perception of the contexts in which norms work and the social practices that are constitutive for their meanings (see e.g. Reus-Smit 2001: 538).

To elaborate on this perspective, this section focuses on the distinction between normative facticity and validity. I propose working with the tension that derives from a dialectical relationship between norm facticity and norm validity. This assumption follows from Habermas's observation that '*that the tension between facticity and validity which is embedded in the use of speech and language returns in the ways in which societalised or, for that matter communicatively societalised individuals are integrated, needs to be worked out by the participants*'. Social integration which is realised through positive law stabilises this tension ... in a particular way' (Habermas 1992: 33). The facticity–validity tension provides a working link between law and politics. It is hence considered as the basis for a legitimate and radically democratic state of law, which in turn provides a framework for performing social integration based on discursive processes towards the application of positive law. Individual action must therefore be based on a set of organising principles such as 'equal access to participation' in an ongoing dialogue and proceed according to the democratic constitutional principles of 'mutual recognition' and 'contestedness' (Tully 1995, 2002).

Tully proposes the two principles of constitutionalism and democracy to that end. First, the principle of constitutionalism implies that the discussion of successful norm-implementation needs to consider the fact that 'reasonable disagreement and thus dissent are inevitable and go all the way down in theory and practice'. As a result, there 'will be democratic agreement and disagreement not only *within* the rules of law but also *over* the rules of law' (Tully 2002: 207). It follows that deliberation over norms in bargaining situations in transnational arenas is unlikely to cover the whole story when considered as a 'snap-shot' situation in which interaction is limited according to time and context. In turn, and following the democratic constitutionalist perspective, deliberation is not reduced to mere – sociologically observable – performance. Instead, it bears the potential of having an impact on normative substance at the same time. Secondly, the principle of democracy

requires that, although the people or peoples who comprise a political association are subject to the constitutional system, they, or their entrusted representatives, must also impose the general system on themselves in order to be sovereign and free, and thus for the association to be democratically legitimate ... These democratic practices of deliberation are themselves rule governed (to be constitutionally legitimate), but *the rules must also be open to democratic amendment* (to be democratically legitimate). (Tully 2002: 205, emphasis added)

It follows that, in principle, democratic procedures are a precondition for establishing the validity of norms (Joerges 2002: 146). This premise brings the evaluative dimension of norms, which had been left out by the modern constructivist research programme, squarely back in.

If norms are inexorably linked with a larger societal context from which they accumulate and transport meaning for strategic actors, then negotiation and bargaining situations are by definition not limited to the strategic or 'rhetorical' reference to stable norms, even though bargaining situations may suggest just that (Schimmelfennig 2001). Instead, the assumption that discursive interaction transcends institutional boundaries implies a conceptual link between social practices which create meaning, on the one hand, and strategic action which mobilises this meaning as a political resource, on the other. As an intersubjective process, discursive interaction draws on resources which have been created prior to the negotiating and/or bargaining situation. Communicative action thus not only contributes to the social construction of norms, but also reconstructs socio-cultural patterns of the life-world. It has a constructive impact both within modern societies and beyond them. If communicative action is conceptualised as intersubjective, it potentially produces 'new values' in the process of deliberation (Mueller 2001: 173). These new values need to be transferred into the respective elite negotiators' root-communities. Studying the meaning of norms in a comparative perspective then, would generate a better understanding about how out-of-context norm interpretation (and conflict) works. In other words, studying the context transfer of normative meanings casts light on the link between the negotiating actors and their communities of origin. In contexts of norm negotiation in transnational arenas the absence of the life-world has been studied more at length than the issue of contested meanings of norms and their translation into different contexts. The latter remains difficult to conceptualise and requires empirically complex and interdisciplinary exploration. After all, political struggles or strategic arguing always 'bring very different and often conflicting traditions of interpretation, conceptions and weightings of constitutional and democratic considerations to bear on a case at hand' (Tully 2002: 206).

Normative change is then not exclusively observable as an outcome of a negotiation situation in transnational political arenas. It will invariably occur in domestic arenas as well. To capture the missing link between transnational and domestic arenas, 'analysis should proceed beyond the agreement because the agreement and the normative models of its assessment will always be less than perfect, partial, subject to reasonable disagreement, and dissent will likely break out in practice and

The dual quality of norms implies that they are both stable and flexible.

Norm stability follows only if and when contestation regarding both type and the meaning of norms has been overcome. That is, it cannot be assumed as given but needs to be established.

While norm validity is in principle contested, norm facticity does structure behaviour. In turn, as a social practice, behaviour has an effect on type and meaning of a norm.

Proposition: The role of norms in politics is based on the *principle of contestedness*.

Figure 3. The logic of contestedness.

theory, reigniting the process' (Tully 2002: 227). Any assessment of norms within an analytical framework that underestimates this link runs the risk of shaky predictions, for

the traditional end-point of normative analysis, even when it is related to practical case studies, leaves the entire field of implementation and review to empirical social sciences, often under the false assumption that implementation is different in kind from justification, simply a technical question of applying rigid rules correctly. (Tully 2002: 227)

If norm validity is considered beyond the point of acceptance among elites in bargaining situations a closer focus on the embeddedness of normative meaning in the life-world is invaluable. After all, if the meaning of norms stems from day-to-day practices (Habermas 1985: 237), their social dimension is inexorably linked with that context.

Summary

Social norms acquire a degree of appropriateness over time (habitual practices). Legal norms require social institutions to enhance understanding and identify meaning (normative practice). As social constructs, norms are contested by default. We can therefore hypothesise that the contested meaning of norms is enhanced under three conditions. First, a situation of crisis raises the stakes for understanding meanings based on social institutions, while the social feedback factor is reduced. Secondly, the change of governance processes, i.e. the extension of governance practices beyond modern political and societal boundaries, changes the social environment and hence the reference frame of social institutions, so that the social feedback factor is reduced. And thirdly, the historical contingency of normative meaning indicates a change of constitutive social practices, both cultural and organisational, and hence normative meaning over time. This relational perspective on norms holds that norms evolve through interaction in context and are hence considered as evolving and flexible except for limited periods of normative stability (Reus-Smit 2001: 526).⁹ If the importance of norms 'lies not in being true or false but in *being shared*' (Katzenstein 1993: 268, emphasis added), then it needs to be accounted for both conceptually and empirically. Following the three constructivist logics about the 'work' of norms, it is crucial to establish whether or not the condition of 'being shared' holds. Three issues matter in this regard. First, an empirically observable reaction suggests the existence of a norm. Secondly, an empirically observable and analytically expected reaction to an appropriate norm can be established. Thirdly, and importantly for normative approaches, the conditions for legitimate norms in the absence of both a modern constitutional community (no shared legal validity) and a modern limited society (no social recognition) need to be defined. The third condition bears the brunt of legitimate governance, as the following elaborates in more detail.

Transnational Arenas: Maintaining Core Constitutional Norms beyond Modern Limits?

The Habermasian approach is problematic when applied beyond modern constitutional boundaries due to the lack of conceptual fit between the bounded politico-cultural context organised according to constitutionalised rules and norms, on the one hand, and the international anarchic context, on the other. However, as Kratochwil rightly notes,

by making social order dependent upon law, and law, in turn, upon the existence of certain institutions – be they the existence of a sovereign or central sanctioning, mechanisms – we understand the international arena largely negatively, i.e., in terms of the ‘lack’ of binding legal norms, of central institutions, of a sovereign will, etc. As inappropriate as this ‘domestic analogy’ may be for understanding international relations, *the conceptual links between order, law, and special institutions remain largely unexamined even for domestic affairs.* (Kratochwil 1989: 2, emphasis added)

Taking the focus on legitimacy to its full extent means raising the critical question of whether, absent a constituted polity based on the rule of law and a shared life-world from which all participating communicators originate, norms can still be sufficiently legitimated, so that a shared perception of normative validity can be established in principle.

In other words, can Habermas’s ‘notion of a ‘situated reason’ or rationality which gains voice in validity claims that are ‘both context-dependent and transcendent’ (Dallmayr 2001: 341) be applied to analyse dialogue in a context other than the domestic political arena? How does the facticity–validity assumption work in the absence of the political, constitutional and societal boundaries of the concept of modern community? I argue that understanding the cultural validation of norms presents a central step in this process, as cultural contingency presents a major cause of conflict and contestation about normative meaning. Indeed, cultural contingency is an important and heretofore underappreciated factor in research on norms. It is a key condition for norm implementation since ‘the validity claimed for propositions and norms ‘transcends spaces and times’; but in each case the claim ‘is raised here and now, *in a specific context*, and accepted or rejected with concrete implications for social interaction’ (Dallmayr 2001: 341, emphasis added).

The facticity–validity tension therefore hinges on two assumptions. First, as an observable process, norm validation is situated within a limited context of governance based on the principle of constitutionalism which

requires that the exercise of political power in the whole and in every part of any constitutionally legitimate system of political, social and economic cooperation should be exercised in accordance with and through a general system

of principles, rules and procedures, including procedures for amending any principle, rule or procedure. (Tully 2002: 205)

While it refers to a particular institutional context, that context may be defined either in a narrow sense including the ‘cluster of supreme or “essential” principles, rules and procedures to which other laws, institutions and governing authorities within the association are subject’, or in a broader sense including ‘the rule of law, the system of laws, rules, norms, conventions and procedures which govern the actions of all those subject to it’ (*ibid.*). In any case, the type of political arena to which the rule of law applies is characterised by varying degrees of constitutionalisation through the interplay of its legal, social and cultural spheres. Thus, objections may be raised insofar as constitutionalisation in world politics remains an arguable phenomenon (Cass 2001).

Secondly, as a universal concept communicative action proceeds from the assumption that any speech-act relates to the audience of an ‘*unlimited community* of interpretation to which the negotiated positions must appear reasonable in order to be justified, and in other words, acceptable’ (Habermas 1992: 35, emphasis added). While ‘the universality of the assumed rational acceptability pushes beyond all contexts’, it is ‘only the binding acceptance of validity in a particular situation which prepares the ground for smooth performance of everyday practice’ (*ibid.*: 37). That practice is embedded in the socio-cultural context of the predominantly domestic arena of the life-world. For students of international relations the lack of a common life-world beyond the domestic realm presents a critical absence which has been found to undermine the communicative action approach (Keck 1997). Comparative studies on transnational arenas and their input on divergence and/or convergence in interpreting the meaning of norms can offer helpful new insights to this growing problem in international relations theory.

While according to Habermas the law should have an integrative function between individuals and systems, this reference to law is conceptually based on modern Western societies (Habermas 1992: 15; Schluchter 2003: 548). Whether or not that conceptual basis is flexible enough for the facticity–validity tension to achieve the status as a fundamental principle, or, a *Grundnorm* beyond modern constitutional limits, remains to be established. Research needs to address three reservations about the applicability of the Habermasian facticity–validity tension to global politics. First, can we speak of a context which would sustain the reference to a community of interpretation based on shared principles in world politics? Secondly, the question of whether or not, in the absence of a global life-world, substitute life-worlds can/ought to be created. Thirdly, whether or not a life-world is the necessary condition for establishing the facticity–validity tensions at all, or whether other viable alternatives are available.

All three issues lay the ground for assessing the potential repercussion of norms that transcend boundaries between the global and the domestic. They ultimately question the disciplinary boundaries of international relations theory which sustains the formation of communities as reference frames in world politics. For example,

regime theories and neoliberal institutionalism demonstrated that a growing network of institutions is influential for behaviour. The perception of routinised practices, as well as epistemic and security communities sustains the point (Koslowski & Kratochwil 1994; Adler & Haas 1992). Processes of legalisation, constitutionalisation and institutionalisation beyond state boundaries have further demonstrated the growing impact of emergent types of international communities with guiding qualities for political action (Abbott et al. 2000; critically, Finnemore & Toope 2001). The focus on norms in regime analyses seemed to suggest just that, i.e. actors (states) referred to shared rules, procedures and norms in given issue areas (Krasner 1993).

In sum, work on life-world construction and constitutionalisation beyond the state suggest that the facticity–validity assumption does offer an access point for studying the role of norms in world politics. Particularly studies on the WTO and the EU suggest that while a full-blown constitutionalised setting cannot be assumed, norm generation, norm setting and norm implementation are guided by proto-constitutional settings nonetheless. They are however likely to follow different – less stable and more contested – rules than in a fully constitutionalised organisation such as the political arena of the modern nation-state including the related set of societal institutions. The degree of importance of these factors varies according to type of negotiation context, i.e. its degree of institutionalisation or constitutionalisation. For example, negotiations in more densely institutionalized contexts such as the EU or the WTO will produce a stronger spill-back into domestic contexts than, say, negotiations over the Anti-Land-Mine Treaty or the Kyoto Protocol.

The changing institutional context in global politics offers an opportunity to elaborate on the conceptual dilemma inherent in the Habermasian approach. Thus, it has been demonstrated that the validity of legal norms cannot exclusively be deduced from the social acceptance of norms by the involved elites. Instead, legal validity requires inductive demonstration through discursive procedures that alone can establish legitimacy through communication (Habermas 1992: 47). Applied exclusively to elite deliberation, communicative action offers only a partial answer to the problem of behaviourist perspectives on regimes.¹⁰ Yet, accepting the tension between facticity and validity as a *Grundnorm* implies that deliberations over norms are not limited to identifying and validating one norm amongst others. It also includes deliberation over the meaning of a norm, and importantly its perception in the light of socio-cultural trajectories and associative connotations that potentially question a norm's meanings. If norms are in principle contested, their prescriptive force cannot be taken for granted.

With a view to assessing the political consequences of compliance situations students of global politics then need to incorporate two factors: first, the meaning which norms develop through communicative action in negotiation situations in transnational arenas, and secondly, the contexts into which the meaning created through norm validation spills back into domestic arenas. It has been convincingly pointed out that multi-national negotiation situations challenge the assumption of shared norms in the true meaning of the word, i.e. conveying the same meaning to

different actors (Mueller 2004). After all, despite densely institutionalised settings, the life-world status of communities beyond state boundaries remains fuzzy. This creates problems when identifying the context and the procedures in which norms are validated. Dealing with norms in transnational settings invariably brings different expectations to the negotiation table. Recent arguing approaches have raised the issue of whether or not there is potential for creating life-worlds in global politics. As Mueller observes, the ‘theory of understanding-oriented action ... must expect that actors struggling to reach understanding must first create a substitute for the missing life-world’ and he proceeds that ‘it is evident that substitutes or assistance must be found, in order to fulfil the important function of the life-world in processes of understanding where the fragile web of international law and tradition is inadequate’ (Mueller 2001: 170). He finds however, that some albeit tacit observable life-world constructions can be identified in the realm of global politics. They include regimes, memory exchange, epistemic communities and similar cultural-historical experience.

Research Propositions

Conflicts over the interpretation of meaning of fundamental norms such as non-intervention or human rights are common. Such conflictive interpretations can be problematic insofar as situations of norm contestation potentially threaten balanced negotiation environments which in extreme cases, lead to opposing decisions regarding military interventions. In situations of governance beyond the state compliance with norms indicates that norms are expected to be effectively implemented ‘out-of-context’. That is, normative meaning is expected to travel. In practically all cases of compliance with norms in international relations, that process involves the transfer of normative meaning between political arenas. Here, the transnational arena gains in importance as the new unit of analysis. In transnational arenas, as in any political arena, the dual quality of norms is played out along the legal, social and cultural dimensions of any political order.

First, the *legal validity* of norms is established through the stipulation of norms within a constitutional text or treaty. That is, the norms’ legitimacy is based on an, albeit abstract and mythical yet widely acknowledged, social contract between the governors and the governed of a particular modern community. The *social recognition* of norms follows from the familiarity with and habitual appreciation of institutional settings in particular societies, where a society is defined as ‘the legitimate order through which communicating individuals organise their respective belongingness to social groups and secure solidarity’ (Habermas 1988: 209). The *cultural validation* of norms evolves from the individually developed ‘associative connotations’ (Kieser 1993) of a particular norm that is derived from and constituted by individual access to cultural representation. Here it is important to note that, first ‘culture is the supply of knowledge from which communicating individuals draw interpretations when exchanging knowledge about particular issues in the world’ (Habermas 1988: 209), and secondly, culture includes shifting and changing groups

which are not bound to a particular constitutionalised political community, nor to the limited institutions of one particular society. Cultural validation is hence the most flexible condition in the three steps towards establishing normative meaning (Eder 2004; O'Hagan 2002). In the flexible world of governance beyond the state it therefore gains key analytical importance. It is identified by the individual ability to place and appreciate a norm based on everyday experience in the 'life-world'¹¹ as opposed to the societal reference frame of the 'social world' or the legal reference frame of constitutionalism, respectively.

I propose a research programme that seeks to assess convergence and/or divergence of normative meanings based on empirical research. This research will collect individually held associative connotations with reference to a set of core constitutional norms, such as e.g. democracy, the rule of law, fundamental and human rights, and citizenship. Drawing on Habermas's more recent note that "'values" – including those which can count on global recognition – are no pie in the sky, but obtain validity exclusively within normative orders and practices of particular cultural life-styles',¹² I argue that transnational arenas offer spaces in which normative meaning stands to be mediated, re/constructed and contested. They are therefore central analytical factors for efforts to overcome the modern limits of Western societal and legal integration posed by constitutionalisation beyond the state (Puetter 2003; Weiler & Wind 2003). The proposed approach involves an analytical move from systems and societies towards individual interaction and the cultural representations created thereby.

Summary

The concept of the dual quality of norms advanced in this article, perceives norms as entailing a structuring (regulative and constitutive) quality identified as standards or reference frames for behaviour, on the one hand, and a constructed (evaluative or practice-based) quality generated by socio-culturally embedded practices, on the other. The constructed dimension was put aside early on by social constructivists. By broadening the research agenda towards norm flexibility, this article sought to bring the process of contestation about a norm's meaning on a horizontal level back in. While the vertical contestedness of norms on the supranational level has been brought in by the arguing approach, the remaining challenge lies in conceptualising the logic of contestedness of normative meanings as a condition which ought to be validated in world politics. To address this challenge, comparative case studies need to demonstrate the impact of the flexible quality of norms empirically to reconstruct normative meanings.

The assumption of the facticity–validity tension offers a principled approach to the contested and constitutive role of norms. Yet the question about the role of norms in the 'postnational constellation' (Habermas 1998: 494) in the absence of a modern communities that provide the context for both life-world and system world does remain on two grounds. First, the validity claims of norms are exclusively based on norm choices not norm meanings. Secondly, and following from the first

observation, if norms are dealt with as ontologically primitive units, their contested substance – a precondition for legitimate norms – is not acknowledged. In other words, validity claims sustain the legitimacy of a norm within a specific context, say a negotiation situation, yet, they cannot account for the assessment of sustained norm legitimacy once norms are transferred into another context, or, once they are considered over an extended period of time. In turn, the societal perspective considers norm contestation as a condition for establishing the shared validity of norms. It conceptualises contestation ‘all the way down’ with a view to transcending (and possibly challenging) the meaning of norms between contexts (Johnston 2001: 494). As Habermas points out, ‘if contexts of interaction, as I assume with Durkheim and Parsons, cannot be transformed into stable orders on the basis of mutually interacting success-oriented actors, then society must be integrated through communicative interaction, *in the end*’ (Habermas 1992: 43; emphasis original). In the absence of established societal institutions which offer a reference frame for individuals to establish whether or not a norm is appropriate and just, cultural representations (Eder 2004) will provide vital information for interpreting a norm’s meaning.

Conclusion

Whilst the thrust of the study of norms in world politics has stressed the structuring quality of norms, the additional dimensions of context and time cast light on a more complex approach that appreciates the dual quality of norms as structuring (regulative, constitutive) *and* constructed through social interaction. According to the three approaches presented in this article, research on compliance involves (1) identifying social recognition (facticity) in a particular case, (2) arguing about the type of norms, and (3) contestation over the meaning of norms (see Figure 4).

Perspective	Assumption	Logic
Behaviourist	Facticity assumption: norms structure behaviour	<i>logic of</i> appropriateness
Arguing	contested facticity & structural quality of norm assumption: types of norms are contested and norms structure behaviour	<i>logic of</i> appropriateness <i>and logic of</i> arguing
Societal	Contested facticity & validity assumption: types and meanings of norms are and should be contested; norms and practices are mutually constitutive	<i>logic of</i> contestedness

Figure 4. The dual quality of norms.

From this threefold assessment of the dual quality of norms, it follows that norms are prone to cause conflictive interpretation in politics, when norm transfer between different types of political arenas occur subsequent to inter-national encounters. More specifically, I argued that if contested meanings of norms are not addressed in inter-national negotiations, political conflict in the aftermath of these negotiations is to be expected. As all individuals carry individual normative baggage and only restricted groups of inter-national elites share the conditions which are necessary to perceive legal validity, social facticity and cultural validation in the precise same way. Contestation is therefore a *sine qua non* for the successful interpretation of norms in global politics.

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Notes

1. See Kratochwil's point that 'material factors such as the changes in the technology of destruction have to be noted, as have changes in our ideas concerning issues of legitimacy, sovereignty, governmental powers, etc. Recovering the original is, therefore, not an idle undertaking. But understanding the 'original' is only a first, although indispensable, step. The second step entails going beyond the conventional conceptual divisions and their constitutive assumptions, and casting a fresh and unobstructed look of *how ... norms and rules "work"*, i.e., what role they play in molding decisions' (Kratochwil 1989: 4, emphasis added).
2. For example, Ulrich Beck recently emphasised the search for a new 'unit of analysis' which is able to reflect cosmopolitan – read: non nation-state – societal conditions (Beck 2005).
3. The literal translation of Jürgen Habermas's *Faktizität und Geltung* (Habermas 1992) should read 'facticity and validity'. The English translation of the book title as 'between facts and norms' obscures the literal emphasis on the validity of norms in the original work.
4. For example Risse and Ropp point out that 'norm compliance becomes a habitualized practice'. Accordingly, domestic institutionalisation is perceived as threefold, including 'processes of bargaining and adaptation, of arguing and moral consciousness-raising, and of institutionalization and habituation'. Social interaction is thus seen as a key component of 'an overall *socialization process* by which domestic actors increasingly internalize international human rights norms' (Risse & Ropp 1999: 237).
5. Similarly, Kowert and Legro had pointed out earlier 'if norms are important, a second question naturally emerges: Where do norms themselves come from? While the preceding essays [in Katzenstein et al. 1996] devote considerable effort to answering the first question, they rarely address the second one' (Kowert & Legro 1996: 468).

6. As Reus-Smit puts it, 'content and implications [of norms] vary from one historical and practical context to another' (Reus-Smit 2001: 526).
7. This view builds on the observation of the ontologisation of social phenomena elsewhere. For example Alberto Melucci had warned against the ontologisation of social movements (Melucci 1988: 330; 1989: 26); see also Alexander Wendt's critique of the ontologisation of the state (Wendt 1987).
8. The term is Karin Fierke's, Queen's University Belfast, 25 November 2005.
9. For seminal studies on a relational approach to institution building, see for example Tilly 1975; Somers 1994; Giddens 1979 as well as Habermas 1985.
10. This point had been famously raised by Kratochwil and Ruggie (1992) in their seminal study on regimes.
11. While Husserl has coined the term 'life-world' Habermas has developed it into a theory of communication which has been applied to the study of norms in world politics (see Habermas 1988: 210). Habermas explicitly criticises both Husserl and Schuetz for working with social theoretical tradition which supports a 'culturally reductionist concept of the life-world' which is ultimately and 'consequently dissolved into a sociology of science' (*ibid.*).
12. Habermas, *Frankfurter Allgemeine Zeitung*, 17 April 2003, 23. For a similar assessment see Taylor's observation that 'the 'rule' lies essentially in the practice' (Taylor 1993: 58; emphasis original).

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