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## Norms and Norm Contestation

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# Norms and Norm Contestation

*Phil Orchard and Antje Wiener*

## Introduction

Can International Relations (IR) theory, particularly constructivism, and Foreign Policy Analysis (FPA) work together? It has long been argued that there is a disconnect between FPA and IR theory. Juliet Kaarbo, in particular, has argued that this occurs because “domestic and decision-making factors and conceptions of agency are undertheorized and underdeveloped in contemporary IR theory” (Kaarbo 2015, 189). And, while Valerie Hudson and Benjamin Day acknowledge that “bridges seem more easily built between FPA and constructivist schools of IR” they also argue that ideational forces alone cannot be an explanation: “That FPA critique is simple: only human beings have ideas... It isn’t ‘ideas all the way down’; it is *human agents* all the way down” (Hudson and Day 2019, 9, 11).

However, if, as Valerie Hudson has argued, FPA has “an actor-specific focus, based upon the argument that all that occurs between nations and across nations is grounded in human decision makers acting singly or in groups” (Hudson 2005, 1), we would argue that constructivism and FPA have actually become if not theoretically entwined then two complementary theoretical perspectives to understand decision-making at the international, transnational, and domestic levels. These critiques, as we argue below, reflect rather early constructivist theorizing which has been addressed in more recent work (Acharya 2004; Betts and Orchard 2014). Particularly important is the development of norm contestation, which reflects societal practices in which rules, regulations, or procedures are critically questioned. Contestation specifically focuses on how societal actors gain access to shaping these norms in ways that can have both negative and positive effects on how a norm is understood (Wiener 2014, 2018). This argument is rooted in the principle of contestedness which

Reflects the agreement that, in principle, the norms, rules and principles of governance are contested. They therefore require regular contestation in order to work. To that end, it is suggested to establish organizing principles (type 2 norms) at an imagined intermediary level of governance. Thus, the legitimacy gap between fundamental

norms (type 1) and standardized procedures (type 3 norms) is filled by access to regular contestation (as opposed to ad-hoc contestation) for all involved stakeholders.

(Wiener 2014, 1)

It follows that enhancing access to regular contestation increases legitimacy. In light of this principle, “only a contested norm can ever be a good norm” (Wiener 2020: 197).

This chapter explores these developments in three stages. We begin by examining how norm research has developed over the past 30 years, framed around three specific moves that have added layers to constructivist theorizing: a focus on the *social* in global politics, the adaptation of norms in processes of policymaking, and finally a renewed focus on the role that politics plays in processes of norm contestation. We then focus specifically on exploring how norm contestations can lead to behaviorally induced changes in norms (either improving them or undermining them and potentially leading to violations) through processes of proactive, reactive, and interpretive contestations. To better explore how norm contestations link to foreign policy decision-making, we end the chapter with an illustration of the case of the US response to Syria’s use of chemical weapons during the Obama and Trump administrations, including air strikes against the Syrian military in 2017 and 2018.

## The Development of Norm Research in Three Moves

Constructivism first emerged in IR in the late 1980s and early 1990s, and is today “firmly established in mainstream IR theory” (Adler 2013, 112). But – as a relatively new approach – it has also continued to evolve. Thus, many of the critiques that FPA scholars have exposed it to, particularly around its neglect of human agency, *were* true of early norm research. Thus, Kaarbo, for instance, argues that constructivism pays too little attention to how “the social is constructed,” that it fails to conceptualize how norms are contested and negotiated and ignores domestic processes, and that it presumes a too strong connection between culture and policymaking (Kaarbo 2015, 201–203). But let us briefly explore how constructivism has changed in ways that already address many of these criticisms.

In other work, we have argued that norm research within constructivism has gone through three distinct conceptual moves (Orchard and Wiener forthcoming). Each of these moves was integral to the development of norm research, but each one has also introduced its own set of issues and limitations. The first introduced a focus on the *social* in global politics, the second the adaptation of norms in processes of policymaking, and the third has been a renewed focus on the role that politics plays in processes of norm contestation.

The above critiques tend to focus on the first move, which introduced a focus on the social in global politics. This focus included two important developments: exploring the role of ‘social facts’ alongside material facts at the international level, including norms, standards, regulations, rules, and ideas (Ruggie 1993; Searle 1995); and a move away from an agent-centered perspective to instead focus on agents and structures existing in a mutually constitutive manner (Wendt 1999). These shifts were critically important, but much of this early work still sought to “bracket” agents and structures (Finnemore 1996, 25), focusing on the effects one had on the other.

For instance, in Martha Finnemore and Kathryn Sikkink’s three-stage norm life cycle model (Finnemore and Sikkink 1998) norm entrepreneurs play a critical role in the initial stage of norm emergence in placing issues on to the international agenda. However, following the emergence of a new norm, early adopting states become norm leaders and socialize other states to follow them through a variety of mechanisms including legitimation effects,

self-esteem effects, and pressure for conformity. Once a critical mass of states adopts a new norm, it passes a threshold or tipping point. After this point, the new norm is so widely accepted that it is “internalized by actors and achieve a ‘taken-for-granted’ quality that make conformance with the norm almost automatic” (Risse and Sikkink 1999, 15; see also Finnemore and Sikkink 1998).

The problem with this model is that it creates both a limited understanding of agency and of how norms are actually understood. With respect to agency, the model treats norm entrepreneurs as both being present only at the early stages of norm emergence and being treated as part of an outside-in process, with the goal to influence states as unitary actors. It neglects the possibility that states can be norm entrepreneurs (Orchard 2014; Davies and True 2017). It also discounts the capacity of actors within government, such as the US President, to be norm entrepreneurs with their own sources of legitimacy, authority, and persuasion (Orchard and Gillies 2015, 491). A similar issue exists with the life cycle culminating in a norm that is presumed to have a fixed identity, a “stability assumption” in other words, when it is institutionalized at the international level (McKeown 2009, 9; Wiener 2014, 23). Further, the model also sees domestic factors drop out as the life cycle runs its course: “domestic influences are strongest at the early stage of a norm’s life cycle, and domestic influences lessen significantly once a norm has become institutionalized in the international system” (Finnemore and Sikkink 1998, 893). Combined, these remove the capacity of societal agents to understand, challenge, and re-create a given norm in different forms rather than just being norm takers. And, by focusing only on norms that exist and shape state behavior, it also “necessarily brackets the international ethics question of whether or not a norm is ‘good’ or ‘bad’, ‘just’ or unjust” a problem that Havercroft (2018, 117) has referred to as *cryptonormativism*.

These problems led to a *second move* exploring how international norms were adapted in processes of policymaking. Beginning with Amitav Acharya’s work (2004, 247–249) on localization – a process through which agents build congruences between international norms and local beliefs and practices – this move focused on how individual actors – particularly at the domestic level – were able to alter norms to fit their own cultural and institutional contexts. This includes processes of domestic implementation and local translation that can also see national-level legal and constitutional frameworks and domestic political institutions playing important roles (Simmons 2009; Busby 2010; Betts and Orchard 2014; Zimmermann 2017). Regional level institutions can also shape domestic interpretations of international norms (Checkel 2005).

This move also expanded our understandings of norm entrepreneurs, seeing them compete against alternative frames put forward by different sets of actors, winning such framing contests when states accept these new understandings (Payne 2001; Krebs and Jackson 2007, 44–45). *Antipreneurs* may not put forward new understandings, but instead seek to “defend the entrenched normative status quo against challenges” by seeking to refute claims and undermining any new norms (Bloomfield 2016, 321). Thus, Alan Bloomfield identifies Russia as an antipreneur with respect to the Responsibility to Protect (R2P) doctrine by implacably resisting the “accumulation of precedents which would otherwise strengthen a new norm” (Bloomfield 2016, 324). Alternatively, *norm saboteurs* may seek to undermine efforts to adhere to existing norms and thereby undermine the existing status quo, as Andrea Schneider has argued the Trump administration did with respect to multilateral organizations such as the UN Human Rights Council or the World Trade Organization (Schneider 2021, 107, 111). Such efforts may mean that wins are not possible. Opposition may cause potential changes to be stymied, stalled, or blocked (Bob 2012, 32).

Even with these developments, this move introduced its own issues by inadvertently leading to an *ontologization* of norms which focused on the structural effects of norms rather than their socially constructed quality – agents were viewed as shaping the norms, rather than engaging with their underlying legitimacy. This has led into the *third move*, one which focuses on norms as processes which are subject to interpretation and contestation, and which will be explored in the next section.

## Norm Contestation: Key Terms and Concepts

Contestation allows us to understand norms in two key ways. The first is that contestation highlights the importance of conceiving of norms as both indicators of *normality* (i.e. indicating standards of appropriate behavior) and of *normativity* (i.e. indicating moral principles that ought to be applied). The second is that it highlights the “dual quality of norms,” that norms “are both structuring and socially constructed through interaction in a context. While stable over particular periods, they always remain flexible by definition” (Wiener 2007, 49).

Today’s norms researchers especially take account of practices of norm contestation and ask how contestation affects norm-change or stability, whether and if so how contestation affects normative order, as well as more fundamentally how contestation contributes to norm-generation and change, and who has access to contestation? These questions are approached by a research operationalization that distinguishes between practices of contestation and validation, and which begins by identifying norm conflicts to then follow the conflict to local sites of contestation, then identify the involved societal agents, and their opportunities of access to contestation.

The practice of norm contestations generates norm conflicts, which are distinguishable according to two distinct takes of how agents interact amongst each other and vis-à-vis specific norms. The first take considers the challenge-change relationship to take place between a given agent (A) and a given norm (N1) which produces a specific understanding of that norm for that agent – this is the A-N1 relationship. While this interaction may be repeated, it is always between one or more agents (A+1) and a given norm and may reflect two types of contestation: one that is deliberate or one that is interpretive. By contrast, the second take considers the challenge-change relation to take place between a variety of agents (A1, A2, and so on) who are part of a conflictive encounter. During that encounter, norms are challenged and changed. And it is expected that as a norm-generative practice, contestation generates mutually recognized norms or normative meaning, as it were, in addition to normality. Here, the distinction between reactive contestation (objection to norm violation or to compliance with a norm) and proactive contestation (critical engagement with a norm) is helpful. All agents bring individual “normative baggage” to international encounters (Wiener 2010, 203) which may result in consensus or dissensus in a negotiation. In addition, it has been demonstrated that reactive contestation includes both discursive and behaviorally expressed disagreement (i.e., protest, resistance or contention) whereas proactive contestation is performed through iterated discursive interaction. According to the *quod omnes tangit* principle, proactive contestation ideally includes the highest number among the multitude of affected stakeholders (Wiener 2018, 217). This latter type of contestation is therefore key for generating norm(ative) change such as, for example, shared meanings-in-use about extant, emerging, or changing norms and thereby enable compromise.

As Anette Stimmer and Lea Wisken (2019, 516–519) have shown, the practice of contestation can be either a deliberate or an inadvertent process. Therefore, contestation should be understood as including “any differences in the understanding of norms, no matter what the source.”

Deliberate contestations reflect societal agents knowingly contesting different understandings of a norm's validity, which leads to a norm conflict. But agents can also have *unknowingly* adopted different interpretations of what a given norm means. Societal agents reflect a notion of a corporate actor: they are composed of many individuals, whether in a state, organization, or other agglomeration. Particularly as a given norm moves downwards through the meso and micro-levels, it will primarily be subject to contestations by societal agents within the state (or within large organizations). Specific implementation processes, during which formal legal and policy mechanisms are introduced in order to routinize compliance, will be particularly prone to these forms of contestation (see Betts and Orchard 2014, 22).

The key issue here is that this domestic implementation process (as it occurs not only across the micro-level sites, such as within formal domestic institutions such as legislatures or the Courts, but also through more informal processes in government) may incorporate both visible factors – such as formal constitutional functions – and invisible factors – including “expectations of norms and the interpretation of their respective meanings derived from the historical and cultural contingency.” These constitutional functions are “crucial for the interpretation of norms and yet may remain hidden or opaque to actors beyond the state (Wiener 2008, 7, 23). Thus, in 2013 UK Prime Minister David Cameron moved a motion in the House of Commons to support a potential military intervention following the Syrian government's use of chemical weapons. Despite no constitutional requirement to do so (involvement in the 2011 Libyan intervention was authorized only post-hoc, while involvement in Afghanistan was not subject to a vote), Kaarbo and Kenealy note that Cameron's action here was an indication “of changing norms and efforts to strengthen parliamentary authority in security policy...” (Kaarbo and Kenealy 2016, 35–36; Mello 2017). In this case, Cameron's decision was ill-fated, with Parliament voting against the government and blocking any further action.

Three types of contestations are possible. *Reactive contestations* tend to occur at the implementing stage and are indicated primarily as an objection to compliance with or violation of a norm. Typical for this practice are contestations of norm violation in cases where fundamental (type 1) norms such as the prohibition of torture or sexual violence against women and girls during wartime are targeted (Wiener 2018, chs. 6 and 7, respectively). *Proactive contestations* tend to occur at the constitutive state of norm implementation, and are indicated primarily as efforts to constructively engage with a norm. Typical for this practice are contestations in the process of detailing the emergence of an organizing principle (type 2 norm) such as for example the R2P or the common but differentiated responsibility norms, respectively (Wiener 2018, 2014). Finally, *interpretive contestations* reflect that any given agent may have interpretive variance on how they understand a given norm. Such variances may not be readily apparent without direct application of the norm and, in theory, can exist between any agent and any norm. Thus, interpretive contestations have a distinctly different character than other types; they may be inadvertent rather than deliberate and more likely to appear in the form of applicatory contestations rather than validity contestations as the agent believes their understanding of the norm is the same as others (Orchard and Wiener forthcoming). In 2008, when Myanmar sought to limit international humanitarian aid after being hit by Cyclone Nargis, French Minister of Foreign Affairs Bernard Kouchner suggested the UN Security Council use the R2P to authorize assistance without the consent of the government. This view was widely rejected internationally, with the UN Special Advisor on R2P Ed Luck noting that “it would be a misapplication of responsibility to protect principles to apply them at this point to the unfolding tragedy in Myanmar” (Bellamy 2011, 58).<sup>1</sup> As Eglantine Staunton demonstrates, however, Kouchner's argument reflected how France had

conceived of human protection since the 1980s as “not restricting it to specific populations or sources of emergency” (Staunton 2020, 125).

These types of contestation take on the second form of challenge–change relation, between a specific norm and a variety of agents (A1, A2, and so on). During such encounters, norms are challenged and changed. And it is expected that as a norm-generative practice, contestation generates mutually recognized norms or normative meaning, as it were, in addition to normality. While the conflict is likely to be ignited through contested universal validity claims of a fundamental norm – such as human rights, the rule of law, or the ban on landmines – it is expected to settle the ground rules or the organizing principles according to which these universal validity claims are sensibly implemented. These ground rules reflect a compromise considering constraints and opportunities of sustainable normativity in a given context. The central research question is the effect on the meaning of the involved norm/s: does the contestation only take effect at the implementing stage (reactive contestation), or does it imply a more substantive impact at the constitutive stage of norm implementation (proactive contestation)?

The first take assumes that agents no longer consider a norm as appropriate (*applicatory contestation*) or do not agree with its value (*validity contestation*). When a norm such as the torture taboo is no longer taken for granted, increased reactive contestation indicates the change. In this case, agents object to the implementation of the norm (Price and Sikkink 2021). The key interaction at the offset for empirical research is therefore the reaction of agent A to norm N1, which is most likely to be substantiated by further reactions of agent B (+1) to norm N1. In turn, the second take on the situation of contestation involves agents who clash with others in international encounters. Based on reconstructive discourse analysis of these contestations, this take reveals the norms that are at stake, the conditions of access, and the emerging changed normative meaning. For example, while a norm such as say the right to fish is defined by the statutes of the United Nations Convention on the Law of the Sea (UNCLOS), it is interpreted differently by the involved agents who do not share the same national roots. Upon these agents’ encounter in international contexts, the contested implementation of the norm comes to the fore. The key interaction is a norm conflict between agents A and B (or more) about which norm (N1 or N2) to refer to, in order to warrant proper implementation, or what the norms’ hierarchical orderings are. Here, the key question is whether the contesting agents agree on the authority of one norm N1 (the right to fish according to the rule of law under UNCLOS) or another norm N2 (sustainable fisheries according to regional experience in the North West Atlantic Ocean). Agreement on which norm to follow requires engagement and a struggle over the recognition of a shared ground rule to guide further common action.

A final question relates to how norms are validated. Norm validation takes on three distinct forms relating to both the scale of global order and the stage of norm implementation: *formal validation*, *habitual validation*, and *cultural validation*. In the context of international relations, *formal validation* is expected in negotiations involving committee members of international organizations, negotiating groups, ad-hoc committees or similar bodies involving high-level representatives of states and/or governments. It entails validity claims with regard to formal documents, treaties, conventions or agreements. *Habitual validation* is practiced habitually and therefore depends on the context of social groups. It entails validity claims that are constituted through regular interaction within a social environment. The higher the level of integration among the group, the more likely uncontested habitual validation of norms becomes. Different from formal validation where validity claims are explicitly negotiated, habitual validation reflects mediated access to validity claims qua prior social



interaction within a group. *Cultural validation* is an expression of an individual expectation mediated by individually held background experience. Importantly, the qualifier ‘cultural’ is used to distinguish individual from group practices. It refers to background experience derived through everyday practice and as such carries a thin rather than a thick meaning of culture (Wiener 2014, 9).

Norm clashes indicate where to zoom in on local sites. The cycle–grid model features nine ideal–typical sites which are distinguished with relation to their situation in the process of norm implementation on the one hand, and their location on distinct scales of global order, on the other. Following sensitizing reading to identify norm contestation, the “cycle–grid model” (Wiener 2018, 44, Figure 2.1) allows for empirical research to map contestations with reference to the grid which indicates three ‘scales of global order’ and ‘stages of norm implementation’ on the one hand, and then to evaluate ‘conditions of access’ with reference to the validation cycle, on the other (Wiener 2018, *Ibid.*). The grid allows the identification of, first, the groups of affected stakeholders involved in contestations and, second, the rules of engagement that condition their access to political participation. Following this step of mapping contestations, which typically occur in cases of contested compliance with norms or violations of fundamental norms on local sites, the conditions of access to contestation are evaluated with reference to the cycle. For instance, do stakeholders have access to proactive contestation and hence engaging with negotiations about normative meanings–in–use, or is their access restricted to reactive contestation, i.e. mere objection to implementing a norm as such? At this stage the research moves toward normative evaluation. Here, the validation cycle facilitates the distinction between access to formal, social, and/or cultural validation. It indicates the power differential of affected stakeholders by distinguishing for instance those agents with access to all three practices (typically agents on site 1 involved in proactive contestation about normative substance with regard to a selected fundamental or *type 1* norms) on the one hand, from those who are excluded from full access to participation and whose impact on shaping normative meanings–in–use is fairly limited due to their exclusion from formal validation (most typically agents on site 9 involved in reactive contestation with regard to a selected regulatory standard or *type 3* norm), on the other (Wiener 2018, 58–59). The approach enables norms researchers to determine which practices of norm validation are available under the rules of engagement that enable and/or constrain affected stakeholders at these sites. The model is therefore helpful for studying the exploration of the opportunities and constraints of agency in global governance. Following the leading questions of practice–based norm research, i.e. ‘whose practices count’ and ‘whose practices ought to count’ in global IR (Wiener 2018, 1), it also opens up important empirical questions including: what is the highest set of *type 2* norms (i.e. organizing principle) that is aggregated through cultural validation of *type 3* norms (i.e. standardized procedures and regulations)?

The arrow on the spinning cycle indicates the normative condition for the best–case scenario, namely that each of the three practices of norm validation become available for the stakeholders affected by a norm. They therefore help localize empirically where and when *reactive* contestation stands to be expected in the process of norm implementation. Relatedly, they also point to the sites where facilitative conditions for *proactive* contestation ought to be established. Sociological research on norms has generated manifold data to map distinct patterns of access to contestation on behalf of the variety of stakeholders. They can be distinguished with reference to type of actor (i.e. state vs. non–state), role in the process of norm implementation (i.e. designated norm–setter or designated norm–follower), and socio–cultural background experience (i.e. individual background experience). While the former two have been thoroughly studied by social constructivists over the past two decades,



the latter have been predominantly addressed by more recent pragmatist and Bourdieusian research (Adler-Nissen and Pouliot 2014; Kornprobst and Senn 2016; McCourt 2016; Sending 2016).

The empirical challenge consists in both identifying *and* facilitating the institutional means for access to proactive contestation. Proactive contestation depends on the normative structure of the environment. To establish this precondition, research begins from instances of norm conflict. These are often, if not exclusively, based on diverging stakeholder expectations. A good example is the ‘Turbot War’ in fisheries governance when Canadian fishing folk considered the fundamental norm guiding their action to be ‘sustainable fisheries’, whereas the Galician fishing folk referred to the ‘right to fish’ in international waters which is formally granted by UNCLOS. Similarly, post-conflict and post-enlargement situations represent environments in which the likelihood of international encounters where norms are contested is particularly high (Tully 2004; Wiener 2008, 64). For example, the rule of law is most likely to be contested in contexts that involve recent political change: post-conflict and post-enlargement contexts involve the transition from one political regime to another including the reform of political institutions (Sedelmeier 2014; Müller 2015). Conflictive encounters in these contexts shed light on stakeholder access to distinct practices of norm validation. The argument holds that by identifying which of the three practices of norm validation (if any) are accessible to the involved stakeholders, the cycle model can offer a framework for explaining stakeholder involvement and alienation with regard to selected norms of global governance.

## Foreign Policy and Norm Contestations: Chemical Weapons Use in Syria<sup>2</sup>

How do norm contestations occur in practice? This section explores contestations over the US response during the Obama and Trump administration to Syria’s use of chemical weapons, including air strikes against the Syrian military in 2017 and 2018. This was a norm conflict marked by two distinct sets of contestations. First, the US government proactively contested the prohibition on the use of chemical weapons (CW), a fundamental norm, by linking CW use to punitive international actions. Second, there were also contestation between two different forms of response. Both US administrations prioritized the prohibition of CW use<sup>3</sup> against an alternative set of norms based around the R2P doctrine which could have also been invoked and potentially provided a clearer legal basis for air strikes. The R2P, which was endorsed by the United Nations at the 2005 World Summit, creates a threefold set of responsibilities on states to prevent war crimes, crimes against humanity, and genocide against their own populations; to assist other states in upholding their responsibilities, and, in the case where a state is manifestly failing its own responsibility, for the UN Security Council to take action under Chapter VII of the UN Charter. Thus, the cases focus *primarily* on how formal validation occurs at international/macro-level through negotiations at the United Nations (site 2 of the cycle-grid model Wiener 2018, 44, Figure 2.1) but it also reflects how habitual validation – particularly the recurring invocations of the prohibition against CW use – can be used to support a particular understanding.

The first major event which triggered a contestation was Syria’s use of CW against Ghouta, a Damascus suburb, in August 2013, which killed at least 734 people. US President Barack Obama was bound by declarations he had made the previous year when he noted that, “a red line for us is we start seeing a whole bunch of chemical weapons moving around or being utilized. That would change my calculus” around military engagement (Obama 2012).

Obama was generally viewed as a strong proponent of the R2P doctrine. His administration had been instrumental in ensuring the Security Council took action against the Libyan government of Muammar Gaddafi in 2011. This was the first (and, to the present, only) time that the UN Security Council authorized non-consensual military action for humanitarian reasons without the consent of the state (Glanville 2013). Consensus for that intervention, was enabled, as Alex Bellamy and Paul Williams (2011, 825) put it, “by several exceptional factors, in particular a putative regional consensus and the poor international standing of Qaddafi’s regime, as well as the clarity of the threat and short timeframe for action.”

Even so, Obama was initially not in favor of following a French proposal to create a no-fly zone over Libya (Watt 2011). In a meeting of his national security team, he noted “based on what I’m hearing, here’s the one thing we’re *not* going to do – we’re not going to participate in some half-assed no-fly zone that won’t achieve our objective” (Obama 2020, 657). At the same time, he was concerned over the potential that “tens of thousands or more would be starved, tortured, or shot in the head” and focused in meetings on seeking to “gauge the likelihood of mass killings” (Lewis 2012; Power 2019, 299–300; Obama 2020, 658–659). Because of this, he did move to support a broader mandate, one that would enable the protection of Libyan civilians but which would also allow the US to quickly step back and hand off the bulk of the operation (Obama 2020, 658–659). Libya also sparked a wider commitment to the R2P. Soon after the Libyan intervention began, Obama introduced a Presidential Study Directive on Mass Atrocities in which he defined “preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States” (White House 2011). The Directive created an Interagency Atrocities Prevention Board, one tasked with coordinating a whole of government approach to preventing mass atrocities and genocide.

Thus, when the Syrian government used CW in 2013, the R2P could well have framed the US response. The use of CW constituted both crimes against humanity and war crimes under the International Criminal Court’s Rome Statute given their widespread and systematic use. Following the release of a US Government assessment on 30 August 2013, which asserted “with high confidence that the Syrian government” had carried out the attacks (White House 2013),<sup>4</sup> Obama stated he had:

Decided that the United States should take military action against Syrian regime targets. This would not be an open-ended intervention.... But I’m confident we can hold the Assad regime accountable for their use of chemical weapons, deter this kind of behavior, and degrade their capacity to carry it out.

*(New York Times 2013)*

These actions, however, were not framed as falling within the R2P.<sup>5</sup> Obama instead framed action around the idea that the prohibition on CW itself “represents a conclusive international norm” based around the Chemical Weapons Convention, even though Syria was not yet a party (Price 2013; Nahlawi 2016, 79–80). In this sense, not only did Obama prioritize one norm – the prohibition on CW use – over another set – the R2P – but US entrepreneurship led this to become the default international position.

Having made the decision to take military action, however, Obama ran into significant issues gaining authorization from the US Congress and then lost the support of the UK when the House of Commons voted against authorizing strikes as discussed above. Privately,

Obama viewed this as undermining the chance to take action to combat mass atrocities in general. As Ben Rhodes recounts:

‘Maybe we never would have done Rwanda’ Obama said. The comment was jarring. Obama had written about how we should have intervened in Rwanda... ‘You can’t just stop people from killing each other like that... I’m just saying, maybe there’s never a time when the American people are going support this kind of thing...’

*(Rhodes 2019, 239)*

The Red Line crisis ended not with a Congressional vote, but with a Syrian chemical weapons disarmament deal, negotiated between US Secretary of State John Kerry and Russian Foreign Minister Sergei Lavrov. The deal led to Security Council Resolution 2118. In their deliberations, Council members reinforced this as a violation of non-use of CW norm and did not reference the R2P doctrine at all. Kerry noted that the agreement required the Assad regime to “get rid of its tools of terror” and that “the world carried the burden of doing what it must to end mass killing by other means.” Jean Asselborn, the Foreign Minister of Luxembourg, stated that “for the first time the Security Council has determined chemical weapons use is a threat to international peace” (United Nations 2013). Price argues these debates demonstrated the robustness of the norm against chemical weapons use: “the violator did not offer any justifications that outright rejected the norm. What’s more, no party attempted to justify the violation as an exception to the norm, and no one attempted to redefine what could count as a violator” (Price 2019, 41).

The disarmament deal, unfortunately, did not end Syria’s CW use. The Trump Administration engaged in two sets of air strikes against the Syrian government in 2017 and 2018 in response to new incidents. In both cases, the Trump Administration continued to focus on the violation of the norm against CW use, and in particular on the need for air strikes to have a deterrent effect. This is in spite of the Trump administration continuing to support efforts to prevent atrocities, with the 2017 National Security Strategy noting that “we will hold perpetrators of genocide and mass atrocities accountable” (White House 2017). Trump himself noted in remarks at the United States Holocaust Memorial Museum in 2017 that “we will never, ever be silent in the face of evil again...” (Trump 2017). And his administration supported the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 which enshrined the Atrocities Prevention Board into US legislation. Further, alternative arguments were made including by Harold Hongju Koh, the Legal Adviser to the State Department under Obama, that the R2P could provide a level of legal protection for the strikes (Koh 2017).

The first air strike was launched by the US against a single military base following a CW attack by the Syrian government on the town of Khan Shaykhun in April 2017, which killed at least 80 civilians.<sup>6</sup> President Trump adopted very similar language to Obama’s around the need to deter CW use, arguing the strikes were justified as being in the “vital national security interest of the United States to prevent and deter the spread and use of deadly chemical weapons” (Gordon et al. 2017).

International deliberations also continued to reflect such a framing and the notion that CW use constituted a mass atrocity, which required an international response. In a UN Security Council debate following the strike, US Ambassador Nikki Haley justified the strike by arguing that “the moral stain of the Assad regime could no longer go unanswered. His crimes against humanity could no longer be met with empty words” (UNSCOR 2017, 17). Matthew Rycroft, the UK representative, noted that “impunity cannot be the norm... war crimes have consequences...” (UNSCOR 2017, 5). But the US also sought to justify

the strike by arguing that it was in violation of the earlier agreement and that Russia was blocking action, with Haley arguing “when the international community consistently fails in its duty to act collectively, there are times when States are compelled to take their own action. The indiscriminate use of chemical weapons against innocent civilians is one of those times” (UNSCOR 2017, 17).

Vladimir Safronkov, the Russian representative, responded to these arguments by suggesting that the attack was “a flagrant violation of international law and an act of aggression” (UNSCOR 2017, 10, 11). Other states, however, were more balanced in their response. The representative of Bolivia, for instance, while noting the “extremely serious violation of international law” stated “we unequivocally condemn chemical attacks...” (UNSCOR 2017, 3, 5). The Chinese response was also muted, with Representative Liu Jieyi simply noting that “China has always advocated for dialogue and consultations... a political solution is the only way out of the situation. A military solution will not work” (UNSCOR 2017, 10).

A more significant series of strikes were undertaken by the US in partnership with the UK and France on 13 April 2018 following another chemical attack on the town of Douma which killed at least 40 people. Trump again argued that “Chemical weapons are uniquely dangerous... the purpose of our actions tonight is to establish a strong deterrent against the production, spread and use of chemical weapons. Establishing this deterrent is a vital national security interest of the United States” (New York Times 2018).<sup>7</sup> National Security Adviser John Bolton echoed this focus on the need to deter CW use:

The US opposed anyone’s use of WMD... A crucial question in the ensuing debate [of what action to take] was whether reestablishing deterrence against using weapons of mass destruction inevitably mean greater US involvement in Syria’s civil war. It did not.  
(Bolton 2020, 46)

The UN Security Council deliberations following the strikes included the same set of issues as those the previous year. Speaking on behalf of the US, Haley framed the attacks as limited, legitimate, and proportionate designed to deter future CW use in response to the violation of resolution 2118 (UNSCOR 2018, 5). Both the UK and French representatives echoed similar points (UNSCOR 2018, 6–8). The Russian representative again stated that the attack demonstrated “a flagrant disregard for international law” and that the US, UK, and France were “undermining the Council’s authority” (UNSCOR 2018, 3–4). Other responses, however, were more tempered. The Chinese representative simply noted that “any unilateral military action that circumvent the Security Council contravene” the Charter (UNSCOR 2018, 10). Other states simply called for restraint (UNSCOR 2018, 10, 16) and an effort by Russia to pass a resolution condemning the aggression failed with only three votes (from Bolivia, China, and Russia) in favor (UN, 2018).

Thus, in all three instances, two different normative understandings could have been invoked, framing the government of Syria’s actions as either a violation of the prohibition on CW use or a violation of the R2P doctrine. In each case, the Obama and Trump administrations framed it as a violation of the norm against CW use, even while also using language that framed the attacks as atrocities. As such, these states appear to be hierarchically rank-ordering norms, treating the non-use of CW norm as the primary norm of concern. They also sought to link violations of the norm to the need for international action, particularly through the retaliatory air strikes of 2017 and 2018. It is clear from the Council deliberations that many countries were leery of these arguments due to their lack of legal foundation. It should also be noted that if the air strikes were designed to deter subsequent use, they do appear to have had

some success- while there was no decline in use following the Khan Sheykhoun attacks, the Global Public Policy Institute found that there was a pause in use following the April 2018 Douma attacks until September 2019, when the US again alleged CW use (CNBC 2019; Global Public Policy Institute 2019).

## Conclusions

FPA has long had concerns with constructivist approaches to the study of norms, particularly viewing them as not providing a sufficient examination of agency at the domestic level. We have sought to demonstrate that while these concerns were justified in terms of the initial first move constructivist theorizing, the approach has evolved considerably. The second move has explored how norms functioned in policymaking, while the third move has layered on top of these understandings a renewed focus on the role of agents through the process of norm contestation. As such, in our view norm contestation provides an important theoretical framing to support FPA, particularly by exploring at the micro- and meso-levels how state-based decision making and norm entrepreneurship can not only lead to norm emergence and change but also proactively create clearer and more legitimate normative understandings. While in the best-case scenario contestations will take place across the cycle-grid, in most cases they happen unevenly, marked by issues with stakeholder access and a power balance that is frequently tipped in favor of actors such as states with privileged access. Even so, highlighting the moments when proactive contestations are able to occur (whether between states, or between states and other actors) is critical for understanding normative legitimacy.

Thus, an important empirical challenge consists in identifying *and* facilitating the means by which stakeholders can gain access to proactive contestations, to study *whose practice counts*. In any situation of norm conflict, the first step will be to identify the affected stakeholders, then to determine where the specific site of contestation is occurring per the cycle-grid model, and finally, to examine whether they are able to access the contestation process. In some situations, this is quite easy- as with our case above where the main stakeholders were state representatives engaging in formal processes, which we mapped onto Site 2 of the cycle-grid. In other cases, this may involve studying a conflict carefully in order to map out what is occurring and to examine what forms of access are possible. This can be done through a series of questions: What norm (or norms) is involved? What is the central claim of the conflict? Do contestations focus on the norm's validity or its application? Or is it a conflict around the application of different norms? What are the claims of affected stakeholders? Do affected stakeholders have access? Do they have reactive access only (the ability to object to the norm) or also proactive access (the ability to critically engage with the norm's substantive values)? These questions can be used to identify both access *opportunities* and *restrictions* and then used to shape and create opportunities for proactive access (Wiener 2018, 30, 44-45).

Potential assets and pitfalls for future norms research include the importance of distinguishing between norms research that considers a norm as promoting stability within a given order (i.e. the liberal international order, or a regional order, or similar) and whether a norm is discussed with regard to the larger goal of addressing justice or inequality in world society (i.e. gender justice, climate justice, or similar). This choice is of vital importance with regard to identifying the guiding research questions. For example, when focusing on single norms research questions typically address the stability, robustness, recognition, or in fact, the violation of norms. In turn, research that studies how norm bundles evolve and work with regard to a particular policy sector, research questions typically target multiple policy and/or political activities.

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## Notes

- 1 While Kouchner's argument was dismissed at the time, the UN Security Council would take such action in 2014 with respect to the Syrian government's similar efforts to block assistance. See Orchard (2017, 177–179).
- 2 This section draws in part on Orchard (2020).
- 3 Significant evidence exists that not only is there a proscriptive norm and even a taboo against the use of CW, (Price 1995): “despite widespread use in World War I, the use of CW has been exceedingly rare in warfare since that time, making the CW taboo an unusually robust norm of warfare” (Price 2019, 38).
- 4 Other reports subsequently came to similar conclusions, with the Independent International Commission of Inquiry on the Syrian Arab Republic concluding the perpetrators “likely had access to the chemical weapons stockpile of the Syrian military, as well as the expertise and equipment necessary to manipulate safely large amounts of chemical agents,” and with Human Rights Watch noting evidence strongly suggests it was “carried out by government forces” (UNHRC 2014; Human Rights Watch 2014).
- 5 One reason to not invoke R2P may have been a lack of clear international law: “our lawyers also had concerns. There was no firm international legal basis for bombing Syria – no argument of self-defense, which justified our actions against al-Qaeda; no UN resolution such as we had had in Libya” (Rhodes 2019, 232–233). The UK did argue that a “doctrine of humanitarian intervention” did allow these steps under international law, but did not explicitly mention the R2P (United Kingdom 2013).
- 6 An OPCW-UN investigation subsequently stated the government was responsible for the attack (UN Security Council 2017). Five days after the strikes, the White House declassified an intelligence report that stated it was “confident that the Syrian regime conducted a chemical weapons attack, using the nerve agent sarin...” However, it is unclear when the report was prepared (New York Times 2017).
- 7 The same day as the strike, the White House stated “with confidence that the Syrian regime used chemical weapons in the eastern Damascus suburb of Duma on April 7, 2018” (White House 2018). A subsequent investigation by the OPCW concluded the attacks had included the use of a ‘toxic chemical’ containing chlorine” but did not assign blame (Al-Jazeera 2019).

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Note: All electronic sources have been last accessed on 4 February 2022.

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