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Navigating Norm Complexity A Shared Research Agenda for Diverse Constructivist Perspectives

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Navigating Norm Complexity

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ABSTRACT

This working paper makes the case for devoting greater attention to problems of norm complexity in international politics, particularly to the social construction of norm relationships. Recent International Relations (IR) research has highlighted that global norms often remain contested and malleable even after their formal adoption, but has focused on exploring the dynamism of single norms. While norm conflicts or synergies are often discussed as “explanatory factors” that may account for the evolution of an individual norm, this paper takes a different perspective: it argues that norm conflicts and norm synergies are themselves the subjects and products of social construction and discursive controversy, and that we need to better understand the dynamics of “norm linkage” that generate different norm relationships. To this end, the paper proposes that constructivist norms scholarship can benefit from an engagement with rationalist theories of regime complexity, on the one hand, and pragmatist-inspired IR scholarship, on the other. By drawing on and contrasting these different perspectives, the paper outlines a joint research agenda that tackles the issue of norm complexity with a range of questions and heuristic tools. To illustrate how the agenda can be put in practice, the paper discusses linkage dynamics between norms of protection (as exemplified by the “responsibility to protect”) and norms of prosecution (as expressed in the International Criminal Court’s Statute) in debates about mass atrocity responses.

1. INTRODUCTION: PROTECTION, PROSECUTION, AND THE ISSUE OF NORM LINKAGE

What should the international community do in the face of mass atrocities being committed in a country? Since the end of the Cold War, different informal norms have emerged that demand an intervention into the sovereign affairs of the respective state in such a case. First, there is a widely shared sense that if a state is unwilling or unable to protect its citizens from atrocities, outside actors have a moral responsibility to take over the task of protection, including with military means if necessary. This moral norm finds its most formal expression in the so-called *Responsibility to Protect* (R2P) principle adopted at the 2005 UN World Summit, but as a broader informal norm it both predates and exceeds the World Summit conclusions.¹ Second, there is a widely shared sense that the international community has a moral responsibility to *prosecute* atrocity crimes that would go unpunished in the national justice system of the state where they were committed, particularly through international criminal justice mechanisms. This second responsibility is reflected, *inter alia*, in the Rome Statute of the International Criminal Court (ICC) as well as other treaties such as the Genocide Convention or Convention against Torture.²

Both norms, the responsibility to protect and the responsibility to prosecute, are among the most politically contested norms of contemporary world politics (e.g. Bloomfield 2017; Bower 2015; Gholiagha 2015; Mills/Bloomfield 2018; Welsh 2013). And while their shared liberal-cosmopolitan roots are evident, their *relationship* is equally disputed in both political and academic circles

1 On the history of the Responsibility to Protect, see e.g. Bellamy 2009; Evans 2008. In the following, I use “responsibility to protect” in lower case letters to indicate that I refer to an informal moral norm which includes the R2P but also related protection principles such as the “Protection of Civilians” or “Atrocity Prevention”, as well as ideas that go beyond the 2005 UN consensus and are shared only in parts of international society, such as a moral duty of humanitarian intervention (Glanville 2006; Pattison 2013).

2 Again, I refer to a “responsibility to prosecute” in lower case letters as a broader moral norm that comprises elements of legal duty (the respective provisions of international conventions) but also a sense of political obligation to prevent “impunity” for atrocity crimes (Orentlicher 2007; Pensky 2008).

(Kersten 2014). Some R2P advocates view international prosecutions as a key atrocity prevention tool, or even as a reactive measure that can deter or limit atrocities in ongoing conflicts (Evans 2008: 115; ICISS 2001: 24). Others, in contrast, see a “peace versus justice” dilemma (Rodman 2011), arguing that judicial interventions in ongoing conflicts can escalate or prolong violence, undermining protection goals (Ku/Nzelibe 2006; Snyder/Vinjamuri 2003).

This disputed relationship between protection and prosecution norms is only one example of a phenomenon that has received scant attention in recent constructivist research on international norms: the construction of norm relations in a global order marked by normative ambiguity and complexity. Norm complexity has long been a central focus of debate for both international law scholars and international relations (IR) theorists. However, this literature treats conflicts and overlaps between different norms as objective facts rather than social constructions. Recent constructivist research on international norms, conversely, has highlighted the ambiguity, contentedness, and malleability of global norms, but has focused on contested interpretations of individual norms, neglecting the contestation of norm relationships. Norms scholars have discussed conflicts or positive associations between different global norms as factors that influence when individual norms become contested and which interpretation of them will prevail, but the question of how positive and negative norm linkages are established, maintained, and challenged has been largely bracketed.

In this paper, I argue that the contestation of relationships between different global norms constitutes an important subject of study for constructivist norms researchers. If norm linkages matter, as norms scholars have argued, we should understand how they come about. To address the theoretical gap, I suggest that constructivist norms scholarship can benefit from an engagement with two neighbouring bodies of theory: rationalist regime theory, which highlights how political actors can strategically create and exploit regime complexity; and pragmatist-inspired IR scholarship, which emphasizes actors’ creative use of different norms in crafting public justifications. Both these schools of thought differ from each other, as well as from established constructivist approaches, in how they conceive *agency* in the navigation of norm complexity. By drawing on and contrasting these different perspectives, I outline a broadly constructivist but internally diverse research agenda that tackles the issue of norm complexity with a range of questions and heuristic tools.

My argument proceeds as follows: In section two, I sketch the theoretical gap that exists within constructivist research on norm contestation with regard to the contestation of norm relationships. In section three, I introduce the concept of “norm linkage” as a theoretical anchor point to think about this gap (3.1). Next, I discuss how ideas from existing research on regime complexity (3.1) and pragmatist-inspired scholarship on public justification in international politics (3.2) can help us to think about agency and norm linkage, and highlight potential theoretical replies to these perspectives that could be formulated from established constructivist positions. Within each section, I use the introductory example of protection and prosecution norms to illustrate how these perspectives can be applied to generate different research questions and arguments about norm linkage. In section four, I conclude by summarizing the research agenda set out in this paper.

2. NORM LINKAGE AS A NEGLECTED QUESTION IN NORM CONTESTATION RESEARCH

Both international law scholars and IR theorists have long been interested in overlaps and conflicts between different norms, institutions or regimes. The international law debate has focused on “regime collisions” in a fragmented global legal order (e.g. Blome et al. 2016; Fischer-Lescano/Teubner 2004). IR scholars working within the “regime theory” paradigm have sought to catalogue and explain phenomena such as “nesting”, overlaps, and divisions of labour between parallel regimes that claim authority over the same issue area (e.g. Aggarwal 1998; Raustiala/Victor 2004; Young 1996), and to understand the consequences of such “regime complexity” for

international cooperation (e.g. Alter/Meunier 2009; Benvenisti/Downs 2007; Biermann et al. 2009; Drezner 2007; Gehring/Oberthür 2009).

Both legal and regime theoretical engagements with norm complexity remain limited, however by their formalism and objectivism. Regime collisions, synergies and other regime relationships are treated as objective givens that result from norms' formal qualities: the issue scope of two regimes factually does or does not overlap, or the implementation of one norm factually obstructs or benefits the effective implementation of another norm. However, even in strongly legalized contexts such as international trade or environmental law, it is often disputed whether practices prescribed by one regime conflict with the rules of another regime. With regard to weakly codified norms – such as the responsibility to protect and the responsibility to prosecute – it is even less clear whether they require different courses of action in the same issue area. Different interpretations of their relationship can coexist, but an objectivist theory is ill equipped to capture such interpretive ambiguities.

In contrast, interpretive ambiguities are a central concern of recent constructivist research on international norms. It has become almost a conventional wisdom to argue that global norms remain contested and malleable even after their formal adoption (e.g. Contessi 2010; Deitelhoff/Zimmermann 2013; Hurd 2007a; Krook/True 2012; Moore 2012; Sandholtz 2008; Van Kersbergen/Verbeek 2007; Wiener 2004; 2014). Theorists interested in norm contestation, despite having many theoretical disagreements with one another, agree on the shared assumption that contestation results from tensions between an abstract and vague general norm and specific situations in which the norm is applied. In Antje Wiener's influential formulation, norms are "structures of meaning-in-use" (Wiener 2009: 178).

While opening conceptual space for conflicting interpretations of individual norms, research on norm contestation has largely bracketed the contestation of relationships between different norms. Although norms researchers have been increasingly attentive to the fact that individual global norms are rarely discussed and applied in isolation from other norms, they have tended to treat norm conflicts or positive linkages as exogenous factors that can give rise to contestation about individual norms or influence its outcomes.

Wayne Sandholtz, for instance, argues that "conflicts between separate bodies of rules" constitute key sources of contestation and norm change (Sandholtz 2008: 101; similarly Wiener and Puetter, 2009: 14). Elsewhere in his model of norm change, he makes reference to positive norm relationships in arguing that some interpretive claims are more successful than others because they "are compatible with existing and widely accepted norms" (Sandholtz 2008: 109). Similarly, Jeffrey Lantis and Carmen Wunderlich (2018) argue in a recent analysis that norms embedded in larger "norm clusters" tend to be more resilient than isolated norms. In these and other analyses, the focus is thus on how conflicts or links between norms *matter* to the contestation of individual norms, but not how these positive and negative linkages are constructed in the first place or how they change over time.³

In this respect, the recent norm contestation literature falls back behind older constructivist scholarship on the emergence and diffusion of global norms that conceives some types of norm relations in a more dynamic way. Most notably, constructivists have long argued that a positive "fit" between a new norm and pre-existing (global or local) norms can be actively *created* by political actors through the rhetorical strategy of "grafting" (Acharya 2004: 244; Finnemore/ Sikkink 1998: 98; Price 1995; 1998). Grafting, however, captures only certain types of positives linkages, namely historical genealogies (e.g. Price 1995) and analogies (Price 1998) constructed by norm-promoting actors. However, the grafting literature gives no consideration to the possibility that other types of norm relationships – such as norm conflicts, synergistic relationships or hybrids – could be actively constructed, and that actors other than "norm entrepreneurs" could be doing the construction work.

³ One notable, but largely descriptive, exception is Moore's (2012) analysis of different principles of equity that became hybridized in UN climate negotiations.

As outlined above, recent constructivist research on norm contestation has equally been uninterested in these possibilities – with the exception of relationships between global and *local* norms. Indeed, it is a core argument of norm contestation research that in interpreting and applying global norms, national and local norm recipients creatively engage with global norms to adapt them to their own contexts and the normative structures that govern them (e.g. Acharya 2004; Capie 2008; Liese 2009; Wiener 2014; Wiener/Puettner 2009; Zimmermann 2016). Through practices of cultural validation (Wiener 2010) or norm translation (Zimmermann 2016), global norms are amalgamated with pre-existing local norms. This dynamic view of norm relationships, however, has not been applied to the study of relationships between different *global* norms.

In summary, while constructivist approaches to norm contestation should be positively disposed to studying contested linkages between global norms, the necessary conceptual and empirical work has yet to be undertaken. In this conceptual paper, I discuss alternative theoretical avenues toward addressing the gap. To understand norm linkage as a specific type of norm contestation, I argue, it is useful to approach it through an engagement not only with existing theories of norm contestation, but also with two bodies of literature that centre on norm *complexity*, although they are situated outside the realm of constructivist norms research: the predominantly rationalist literature on regime complexity, and recent IR theories of public justification in global politics that are inspired by pragmatist sociology.

3. THEORETICAL PATHWAYS TO STUDYING CONTESTED NORM LINKAGES

3.1 What is Norm Linkage?

To understand norm linkage as a specific type of norm contestation, it is useful to start with the tension between the abstract and the specific that is central to *any* process of norm contestation. In Wiener's critical-constructivist reading, norms are contested in concrete situations in which individuals "enact" their meanings in different ways (Wiener 2009). Similarly, more mainstream constructivist such as Sandholtz (2008: 103) emphasize that "norm change is frequently the product not of abstract arguments but of practical disputes arising out of specific actions". Both accounts thus assume that actors contest the meaning of norms by judging specific actions taken in specific situations in light of more abstract norms. As Nicole Deitelhoff and Lisbeth Zimmermann (2013: 5) elaborate, such "norm applicatory" contestation involves a clarification of "whether (1) a norm is appropriate for a given situation and (2) which actions it requires in the specific situation". In other words, when interpreting a given action in light of an abstract norm, actors relate the specific action *positively* to the norm ("action X is required by norm A") or deny the existence of such a positive relationship ("action X is not required by norm A"). In the case of *proscriptive* norms, we can add, they make claims that relate the specific action *negatively* to the norm ("action X is prohibited by norm A") or deny the existence of such a negative relationship ("action X is not prohibited by norm A").

When two different norms are linked with *each other*, this linkage is established through a similar, but dual act of interpretation of specific actions in specific situations. A negative linkage between two norms – or norm conflict – is established by claims that relate a given action to one norm A in a positive way but to another norm B in a negative way. In the case of prosecution of protection norms, a norm conflict is constructed, for instance, by claims that in a given conflict, the responsibility to prosecute (norm A) requires that atrocity crimes are investigated by the ICC (action X), but that the initiation of such an investigation risks escalating the ongoing violence and undermining the responsibility to protect (norm B).

In contrast, a positive linkage – or norm synergy – is established by claims that relate a given action in a positive way to two different norms. For instance, the relationship between protection and prosecution norms is constructed as synergistic by claiming that an ICC investigation (action X) is required *both* to fulfil the responsibility to prosecute (norm A) *and* to deter further violence and thus fulfil the responsibility to protect (norm B).

Finally, claiming the non-existence of a norm conflict, but without asserting a synergistic relationship between norms, is also an act of norm linkage. A non-conflict, as we may call it, is constructed through claims that an action is positively related to one norm A, and is not negatively related to another norm B. For prosecution and protection norms, such a non-conflict would be constructed by a claim that an ICC investigation is required by the responsibility to prosecute, and does not run counter to the responsibility to protect, as it cannot be expected to have an escalating effect on the situation.

This brief mapping of different linkage options raises a range of questions: Who makes linkages between global norms and why? How do they change over time or vary across contexts? Why are some linkage claims more successful than others? And what consequences does norm linkage have for actors' relations with the norms being linked, and with each other? As I argue in the following, scholars interested in these questions can derive different answers from rationalist regime theory, from pragmatist IR theory, and from potential critical and structuralist replies to these positions.

3.2 *Strategic Norm Linkage and a Critical-Constructivist Reply*

As discussed above, regime theorists have long been interested in explaining the causes and consequences of regime conflicts. One key argument in this literature is that overlaps are often purposefully created by self-interested political actors. Actors can use strategies such as "regime shifting", "forum shopping" (Alter/Meunier 2009: 15-7; Helfer, 2004) or "contested multilateralism" (Morse/Keohane 2014) to circumvent rules they dislike, by bringing a contested policy under the purview of an alternative (new or pre-existing) regime. As a result, the effectiveness of the regime in which the issue was originally addressed can be severely reduced (e.g. Alter/Meunier 2009: 19–20; Gehring/Oberthür 2009: 128). Global power inequalities can also be reinforced, since powerful actors are most successful in using forum shifting tactics (e.g. Benvenisti/Downs 2007; Drezner 2007).

These insights into the strategic manipulation of regime relations can be incorporated into a constructivist theory of norm contestation by relaxing regime theory's assumption that norm conflicts result from formal norm characteristics and are thus objectively existent or non-existent. If we replace this assumption with the constructivist premise that norm relations are subject to social construction, this raises the possibility that actors engage in *strategic norm linkage* to exploit the resulting norm complexity for their own purposes.

Such an argument can build on one strand within the existing constructivist scholarship on norm contestation, which assumes that norms can be subject to strategic manipulation (e.g. Bower 2015; Hurd 2005; 2007a, b; Keating 2014; Sandholtz 2008; Van Kersbergen/Verbeek 2007). In this perspective, states (as well as other political actors) are social actors that are embedded in a normative structure and strive to legitimize their actions by reference to these norms. At the same time, however, they are also able to interpret norms strategically to further their own interests, which are never completely norm-determined. As Ian Hurd (2007a: 209) puts it, "norms are both constraining and enabling for states, and states are both socialized to norms and strategic calculators that manipulate them" (see also Hurd 2007b). Norms circumscribe legitimate political actions, and legitimacy constitutes an inter-subjective power resource that actors struggle over when they argue over the meaning of norms (Hurd 2005: 298–503).

Following the same logic, actors can be assumed to strategically create negative and positive *linkages* between different norms in ways that help them to legitimize their policy preferences vis-à-vis other political actors and/or the global public. By creating a negative linkage or norm conflict, they can justify noncompliance with one norm by arguing that this course of action is demanded by another norm. In the case of protection and prosecution norms, for instance, we could speak of a strategically constructed norm conflict, when political actors oppose international criminal prosecutions on the grounds that they could endanger peace and the protection of civilians, although their opposition is really motivated by other concerns. For instance, commentators have argued that some African leaders advance peace-versus-justice type arguments against ICC

prosecutions “to protect themselves” (Abdulai 2010: 9). Others have described similar Russian arguments against an ICC referral of the Syrian situation as “disingenuous at best” (Security Council Report 2014).

While regime theory focuses on norm conflicts, positive norm relationships may also be constructed and used strategically. The constructivist literature on “norm entrepreneurs” acknowledges this possibility, and there is no reason to assume that positive strategic linkage should stop once a norm has been adopted. With regard to the example of protection and prosecution norms, Leslie Vinjamuri, for instance, argues that pro-justice advocacy groups have used the argument that prosecutions can deter crimes in ongoing conflicts to “sell” international criminal justice to reluctant governments (Vinjamuri, 2010: 199). In this case, the decision to initiate a prosecution receives *additional* legitimacy from being positively associated with a second norm, the responsibility to protect.

Yet, political actors could also use positive linkage to expand their margin of manoeuvre. For instance, when international criminal prosecutions are interpreted as an effective tool of protection, this lessens the pressure on actors to implement their responsibility to protect civilians through other, potentially more costly tools: diplomatic negotiations requiring political concessions, sanctions that could hurt own economic interests, or military measures. In this scenario, the positive norm linkage would enable political actors to use criminal justice as a “fig leaf”. Concerns about such a dynamic were already voiced in the ICC’s infancy by observers who warned that “the ICC may become a virtuous excuse for states to turn a blind eye to atrocities” (Smith 2002; see also Vinjamuri 2010: 200).

To summarize, the approach discussed above would lead us to assume that both norm promoters and “antipreneurs” (Bloomfield 2016) can link norms to further their own interests. This implies that interest change or variations in interests across situations can lead to changing or varying linkage claims. Depending on what linkage strategy is used, successful linkage can enlarge actors’ freedom of action and weaken the constraining force of norms, or narrow their choices by increasing the pressure to behave in norm-compliant ways. In either case, we can expect that successful norm linkage is more attainable by powerful actors, and will enhance the power of the political actors engaging in linkage relative to those that are being “manipulated”.

As discussed above, such a concept of strategic norm linkage is based on an approach to norm contestation that conceives actors as both norm-followers and strategic norm manipulators. It is ill at ease, however, with critical constructivist approaches such as Wiener’s that locate the sources of contestation not in diverging actor *interests* but in actors’ different cultural backgrounds formed through socialization in different contexts (e.g. Wiener 2009; 2010). From this perspective, the “strategic linkage” argument can be used as a point of reference to delineate the contours of an alternative, critical-constructivist approach to norm linkage. Such an alternative approach would assume that actors privilege certain linkage arguments not to mask hidden interests, but because their cultural backgrounds dispose them to favour certain narratives about linkage.

In the example of protection and prosecution norms, one obvious cultural background factor is a specific national historical experience in the use of transitional justice mechanisms, including nationally shared narratives about their successes or failures. As Kathryn Sikkink (2011) argues, the legacy of the international Nuremberg and Tokyo trials, on the one hand, and experiences with domestic transitional justice processes in other parts of the world, on the other, formed two historical “streams” which eventually flew together in the “justice cascade” that produced the ICC. Extending this argument, it would be reasonable to assume that experiences in these different streams – and different sub-streams within each – can not only lead societies to embrace international criminal justice but also give rise to certain ideas about *why* it should be embraced. The post-World War II Nuremberg Tribunal, for example, has come to be “engraved in European collective memory as a constitutional moment of retributive justice, which simultaneously (and

somehow paradoxically) might have opened up the route for reconciliation.” (Karstedt 2008: 14). This “European narrative of peace and successful reconciliation” (Karstedt 2008: 14) thus gives rise to a specific interpretation of the “peace and justice” relationship that other regions cannot be expected to share in exactly the same way.

Cultural backgrounds can also vary across professional communities that provide different socialization experiences. For instance, the notion that legal punishment “deters” crime is a dogma that predates the emergence of international criminal justice by centuries (Onwudiwe et al. 2005; Von Hirsch/Ashworth 2009). It thus forms part of the doctrinal socialization of international criminal law practitioners and is ritually reaffirmed in the judgments of international criminal tribunals (Bagaric/Morss 2006).

In summary, a reply to the “strategic linkage” proposition from a critical-constructivist perspective would hold that actors link norms differently, because they have been socialized to do so in different cultural contexts. This suggests that linkages may vary across contexts in which different actors from different backgrounds interact, and that linkages may change over time as the result of communicative encounters across cultural boundaries.

3.3 *Norm Linkage as Justification and a Structuralist-Constructivist Reply*

Apart from regime theory, the question of how political actors navigate norm complexity has also been central to an emerging strand of IR theory that focuses on practices of public justification. This still small body of scholarship, which draws heavily on the pragmatist sociology of Luc Boltanski and his collaborators, is based on the assumption that actors act under an “imperative to justify” (Boltanski/Thevenot 2006: 23; see also Gadinger 2016; Hanrieder 2016; Lesch 2017; Kornprobst 2014). This means that they must relate their *particular* position in a specific situation to *universals* – collectively shared evaluative principles – to reach agreement within their community and enable collective action. Boltanski and Thévenot, and some scholars inspired by their approach, refer to these universals as “orders of worth” or “economies of worth” (Boltanski/Thevenot 2006; Gadinger 2016; Gond et al. 2016; Patriotta et al. 2011); others speak of “repertoires of universals” (Kornprobst 2014) or “repertoires of evaluation” (Hanrieder 2016: 3).

Critically for the purpose of this paper, pragmatists stress the fundamental plurality of these repertoires, which are “irreducible” to each other (Hanrieder 2016: 4). This plurality gives political actors a degree of creative freedom in deciding under which general principle(s) they want to “test” (Boltanski/Thevenot 2006) or evaluate a specific situation or decision (Gadinger 2016: 5; Kornprobst 2011: 79). Actors have the critical capacity of challenging a political decision by demanding a new test under a different moral order, producing a “clash between worlds” (Boltanski/Thevenot 2006: 223; see also Gadinger 2016: 13–6). They also have the capacity of dissolving ambivalent situations that may be viewed from the perspective of different orders in a variety of ways: they can either reject one order as irrelevant, or they can agree to “suspend” a clash between orders by avoiding a clarifying test under only one order. The latter strategy produces a situational “compromise”, and sometimes even a more durable “composite” arrangement – which nevertheless remains fragile and open to challenges arising in new decision situations (Boltanski/Thevenot 2006: 277–81; Hanrieder 2016: 26).

IR theorists have noted the relevance of these theoretical propositions to constructivist norms research (e.g. Gadinger 2016: 9–10; Lesch 2017), offering two broad lines of argument that norms researchers can link up to. According to the first line, a pragmatist lens directs our view to actors’ critical capacity of justifying and critiquing a given policy, such as the abuse of prisoners in the Abu Ghraib scandal, by “employing” alternative evaluative orders, such as “democracy” or “national security” (Gadinger 2016: 14). According to the second argument, a pragmatist perspective can highlight the internal complexity and fragility of individual norms by showing how apparently singular norms, such as the whaling ban, represent temporary compromises between

different broader evaluative principles, including sustainability, cultural protection, and science (Lesch 2017: 44).

Rephrased in the language of constructivist norms research, the first argument draws attention to actors' active construction of *conflicts* between different norms, complementing the focus of existing constructivist research on positive linkage ("grafting"). The second argument highlights actors' capacity to *avoid* conflicts by forging compromises between different elements of a norm, or (as we may extrapolate) between different norms.⁴

In a pragmatist-inspired constructivist perspective, norm linkage can thus be understood as a form of justification that actors use to evaluate, justify and critique political decisions. If public justification involves "subsuming particulars under universals" (Kornprobst 2014: 198), actors engaged in norm linkage subsume one particular decision they wish to defend or criticize under different general norms. For instance, the argument that an ICC investigation in a specific situation would endanger the protection of civilians is a critique that actively produces a "clash between worlds" by demanding a re-evaluation of the decision to investigate under an alternative norm, the responsibility to protect. Those wishing to defend the decision to investigate can reject the re-evaluation, or they can accept it, but enter into a dispute about the proper conduct of this alternative evaluation: Are R2P goals really negatively affected? Will they perhaps even be helped by the investigation? What time frame is the right one and what methods should be used to evaluate the effect?

A further possibility highlighted by a pragmatist-inspired perspective is that actors can *avoid* a clash between norms by working out a compromise. In the case of protection and prosecution norms, an example of such a compromise formula is the "responsibility to protect and prosecute" that scholars and commentators have referred to (Ralph/Gallagher 2015; Thakur/Popovski 2008). Similarly, the "Nuremberg Declaration on Peace and Justice", which was adopted in 2007 at an international conference by state and civil society representatives, states that in ending violent conflicts, "negotiations must build the foundation for both peace and justice" (Nuremberg Declaration at IV.1.1, see UN General Assembly 2008). All of these formulations imply that protection and prosecution norms are relevant in the same situations, but avoid a clarification of how specific decisions are to be evaluated in light of both norms, whether there are conflicts between them, and how these should be handled.

In summary, a pragmatist-inspired approach to norm linkage would hold that actors actively make and unmake conflicts between global norms as part of their routine work of evaluating, justifying and criticizing political decisions. While this creative capacity is a point of agreement with the rationalist perspective presented above, pragmatists reject the notion that actors "seek to invent false pretexts after the fact so as to cover up some secret motive, the way one comes up with an alibi" (Boltanski/Thevenot 2006: 37). Rather, actors exchange justifications to seek orientation about the evaluative standards shared by their community and to "coordinate their actions" through a common application of those standards (Gadinger 2016: 6; see also Kornprobst 2014: 197–8). As some scholars argue, this does not *rule out* the possibility that some actors may strategically modify their private judgments in their public communications to make audiences more receptive to their justification work (Kornprobst 2014: 202–3; Patriotta et al. 2011: 1824, 1832). Still, what drives the "imperative of justification" is not the desire to cover up "true" motives, but the need to craft public agreement in situations of uncertainty as the precondition for collective action.

⁴ Ultimately, the question of whether we are looking at linkages between norms or between norm components is less an empirical than a definitional one. In fact, it would be plausible to assume that different linkages between norms can be enabled by the presence of different moral reference points within individual norms.

One implication of this assumption is that in analysing instances of norm linkage, a pragmatist-inspired approach would often reach different conclusions on how linkage affects actors' relationship with the norms being linked. If actors exchange linkage arguments not to evade an inconvenient norm, but to collectively clarify its relationship with other norms in a given situation, successful linkage – that is, an agreement resulting from this exchange – should not be seen as “weakening” a norm, but as reducing ambivalence, and enabling norm-based collective action in a uncertain situation.

The second implication is that for a pragmatist-inspired perspective, the question of actor motives is ultimately the wrong question to ask (Hanrieder 2011: 395). Is it at the intersubjective level that we can study the work of public justification and the emergence of (or failure to reach) political agreement. Hence, with regard to norm linkage key research questions should be: Which conflictual, synergistic, or composite norm relations are articulated in actors' public communicative exchanges? Can we discern the emergence of a (partial) agreement over time? What tools do actors use and what resources do they mobilize to test the validity of different norms and to stabilize composite constructs?

In the case of protection and prosecution norms, the above-cited Nuremberg Declaration is an example of an instrument that helped to solidify a composite arrangement so that “the beings it associates [in this case, peace and justice, the author] become hard to pry apart” (Boltanski/Thévenot 2006: 279). The declaration was formulated with strong input from academics and international law practitioners, suggesting that political actors interested in linkage – in this case, the Finnish, German, and Jordanian conveners of the conference – successfully enlisted the support of “expert” authorities to forge agreement.⁵

The successful use of authority in this case points to a key point of criticism that has been directed against Boltanski's and Thévenot's approach: its relative lack of interest, particularly in its initial formulation, in power inequalities that shape and channel the work of justification and the public agreements that result from it (e.g. Gond et al. 2016; Lesch 2017: 47). Pragmatist-inspired IR analyses have shown that different “evaluative repertoires”, and compromises between them, have important *consequences* for power hierarchies structuring specific policy fields (Hanrieder 2016). This constitutes a point of agreement with the rationalist argument that norm contestation affects the distribution of symbolic power. However, when it comes to *explaining* the outcomes of communicative encounters, pragmatists reject the idea that the latter are determined by power inequalities (or other structural factors). While Boltanski (2011: 38) recognizes that “it is always the same people who pass all or most tests” (see also Gond et al. 2016), pragmatists still emphasize actors' creative freedom and the resulting unpredictability of communicative encounters (Gadinger 2016: 12). This means that “the invocation of power and authority might be accommodated within the pragmatist framework, not as an unreal distortion of discourse, but as an argumentative operation that can succeed or fail” (Hanrieder 2011: 410).

These arguments differ from the much more structuralist treatment of power in most existing constructivist accounts of norm contestation. For authors both in the “strategic use of norms” school of thought and closer to the critical-constructivist end of the spectrum, the outcomes of norm contestation *are* explicable (and to some extent predictable) by reference to certain structural factors – and power, authority, or “voice”, are key factors that make certain actors and arguments more likely to prevail in a situation of contestation (e.g. Grillot 2011: 542–3; Krook/True 2012: 112–3; Moore 2012: 44; Sandholtz 2008: 108–9; Venzke 2009). The pragmatist-inspired approach

⁵ The conference was opened by high-level keynote speakers, including the ICC Prosecutor, the German Foreign Minister and the Jordanian Minister of Justice, and combined panel discussions among senior UN and national diplomats with academic workshops. Aside from the “Nuremberg Declaration”, which was submitted to the UN General Assembly through a letter by the governments of Finland, Germany, and Jordan, it produced a law-conference style volume containing academic articles (Ambos et al. 2009).

to norm complexity can thus be used, again, as a point of contrast to delineate an alternative constructivist position, in this case a more structuralist one. This position holds that whether or not they are used strategically, claims about norm linkage are more likely to prevail when they are articulated from positions of power or authority – a causal proposition that can be subjected to comparative testing. In the case of protection and prosecution norms, such a test could consist of tracing whether linkage arguments first introduced or consistently advanced by powerful actors (e.g. permanent members of the UN Security Council) or by recognized institutional authorities (e.g. the UN Secretary General) over time gained the upper hand over alternative views of the protection-prosecution relationship.

Analogous arguments can also be constructed with regard to other structural factors, such as the existence of precedents (Sandholtz 2008) or the existence and character of institutional venues in which contestation takes place (Coleman 2011; Deitelhoff/Zimmermann 2013: 13). In a structuralist-constructivist reading, these are conditions that affect the likelihood that norms will end up being linked in a specific way. In a pragmatist reading, actors can draw on these factors as resources and reference points in their creative and fundamentally unpredictable exchanges of justifications and critiques.

4. CONCLUSION: DIVERSE PERSPECTIVES – JOINT RESEARCH AGENDA

In this paper, I have argued that constructivist IR theorists interested in norm dynamics should move from studying the contestation of individual norms to studying the contestation of linkages between different global norms. To capture the political dynamics of norm-linkage, I have suggested, constructivist norms researchers should engage with two neighbouring schools of thought that put norm complexity at the centre of attention: the rationalist literature on regime complexity, and pragmatist approaches to public justification in global politics. Both formulate insights that can be incorporated into constructivist thinking about norm contestation, but both also permit to formulate alternative propositions within a constructivist paradigm. Jointly, these alternative viewpoints present a research agenda for constructivist studies of norm linkage, and provide a range of heuristic tools to address its four central questions:

(1) *What are actors' individual motives or reasons for linking norms?* A constructivist argument infused with insights from rationalist regime theory would expect that actors link norms strategically to evade inconvenient norms or to pressure others to follow norms they favour. A critical-constructivist perspective, in contrast, would highlight differences in actors' socialization and cultural backgrounds (both national and professional) to understand why they disagree about links between norms. A pragmatist-inspired theory, finally, would assert that asking about individual motives poses the wrong question, since norm linkage should be studied as a collective endeavour to forge political agreement.

(2) *Why are some linkage claims more successful than others?* In other words: What factors influence the outcomes of norm linkage? From a rationalist-leaning perspective, we should expect linkage arguments to be more successful, the more they reflect the interests of powerful actors. Rationalist and other structuralist-constructivist perspectives would agree on the importance of power, adding the existence of precedents and the institutional setting for linkage struggles to the factors that will systematically affect their outcomes. A pragmatist-constructivist view would differ sharply from both these perspectives in emphasizing actors' creative freedom to use power resources, authorities, precedents, institutional rules, etc. as instruments to bolster certain linkage arguments and achieve partial stabilizations of argumentative compromises, but without ever being determined by them. In the pragmatist view, linkage struggles remain fundamentally unpredictable, and their outcomes inherently fragile.

(3) *How and why does linkage vary across contexts and over time?* Different answers to this question can be derived from different perspectives on questions (1) and (2). All constructivist perspectives

discussed in this paper would agree that such variations are to be expected, but they would emphasize different sources of variation: actors' situation-specific interests (rationalist constructivism), changing patterns of socialization (critical constructivism), power shifts, path dependency, and institutional change (structuralist constructivism), or actors' own creativity (pragmatist constructivism).

(4) *What is the impact of norm linkage on different actors' relationship with norms, as well as with one another?* A rationalist-constructivist perspective would differentiate between those manipulating norm linkage in line with their interests, which can enlarge their freedom of manoeuvre with regard to norms, and those being manipulated, whose freedom of manoeuvre can be constrained by linkage. It would also expect successful linkage to increase the symbolic power of the manipulators. A pragmatist-constructivist view would agree that linkage can affect power hierarchies, but it would take a different view on how linkage affects actors' relationships to norms. Rather than assuming actors to be manipulative, it would stress that the collective process of clarifying norm relations constitutes a precondition for norm-based collective action, implying that linkage struggles can actually *strengthen* norms' constraining power on the collective.

In this article, I have used the example of the contested relationship between protection and prosecution norms in global politics to illustrate how the agenda sketched here could be put in practice. Given the density and complexity of today's normative landscape, however, there are many other relationships between global norms that merit being approached with the same questions and heuristic tools.

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