

RESEARCH ARTICLE

Liberal-democratic norms under contestation: Norm relations and their decoupling in the US Supreme Court's decisions on abortion

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Abstract

This article studies the contestation of liberal-democratic norms from within the liberal international order (LIO), focusing on the case of abortion rights. The US Supreme Court's decisions on abortion, central to both domestic and global debates, provide a compelling case study of how two opposing sides may invoke the same norms, rather than presenting a case of norm collision or co-optation. In contrast to the binary pro-choice versus anti-abortionist framing, this article shows that both sides invoke liberal-democratic norms, but differ in how they relate the norms to each other and how they interrupt established norm relations. Against this background, the article introduces the concept of norm decoupling, highlighting how norm entrepreneurs isolate certain norms from hitherto related norms. This process contributes to a more subtle backsliding of the LIO, particularly by decoupling majority votes from other democratic, substantial norms, and by decoupling liberal-democratic norms from their gendered dimensions. Norm decoupling thus explains diverging interpretations of shared norms within the same context. This advances our understanding of norm contestation and interpretation, shedding light on how liberal-democratic norms subtly erode from within the LIO.

Keywords: abortion; constitution; contestation; liberal international order (LIO); norm decoupling; norms

Introduction

Over the past few decades, liberal-democratic norms have come to be perceived as global norms that are fundamentally shared. They shaped the creation of many post-war international organizations and global governance institutions, and gained momentum in the post-Cold War international order – what has come to be referred to as the liberal international order (LIO). Although these norms have not always been adhered to in practice, and their application has been contested, they have been shared in principle. More recently, however, liberal-democratic norms have increasingly been challenged and seem to be in decay globally (Acharya 2017; Börzel and Zürn 2021). Formal or discursive references to these norms increasingly lead to diverging interpretations, not just of their application but of their very substance.

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A global case in point is norms relating to gender equality, which are being seriously challenged by expressive anti-gender, anti-feminist and traditional norms (Cupać and Ebetürk 2022: 2; Sanders 2018). The right to abortion in particular is an important prerequisite for liberal-democratic norms regarding gender equality and women's full and equal participation in society (Sanders and Jenkins 2022a). By contrast, denying women the right to an abortion (or failing to implement such a right) is seen as a hallmark of more conservative, patriarchal and authoritarian regimes (Sigvaldason and Ómarsdóttir 2022).¹ This article therefore uses abortion rights as a case study to examine the backsliding of liberal-democratic norms more generally.

The US Supreme Court's 2022 *Dobbs v Jackson Women's Health Organization*² judgment seems to signal the further decay of liberal-democratic norms from within the LIO, as its withdrawal of the right to abortion is fuelling (and fuelled by) the collision between pro-choice, liberal and gender equality norms on the one hand and anti-abortionist, conservative norms on the other. Anti-abortionists celebrate the judgment as long overdue, and some (including Supreme Court Justice Clarence Thomas) even embrace it as a first step towards rescinding the constitutional protection of a whole range of other liberal rights, such as same-sex marriage. Accordingly, pro-choice advocates fear the decision not only seriously exacerbates gendered, social and economic inequalities, but further jeopardizes liberal-democratic norms (Democratic Erosion 2022; *The Guardian* 2021). This interpretation seems to align with the literature on the contestation of liberal democracies through norm collision (Gholiagha, Holzscheiter and Liese 2020; Sanders and Jenkins 2022b; Wunderlich 2020) or norm co-optation (Björkdahl and Gusic 2015; Dixon and Landau 2019; Garcia Holgado and Sánchez Urribarri 2023: 351).

However, this article argues that understanding the *Dobbs* decision as a case of norm collision or norm co-optation does not adequately capture the processes of norm contestation and norm interpretation in the Supreme Court, as the latter is required to adhere to – and interpret – liberal-democratic norms that are constitutionally enshrined. While the court's deliberations on abortion result in two colliding sides voting for or against the right to have an abortion, both sides actually refer to the *same* norms in the *same* context; they do not argue for or against abortion based on colliding norms or values. The difference lies in how the justices, as norm entrepreneurs, link norms and disrupt norm relations. Studying the Supreme Court's interpretation of the right to abortion therefore provides insights into the question of how liberal-democratic norms are challenged by differing interpretations of shared norms in the same context, which is a much subtler process of liberal-democratic norm decay than via contestations through norm collision or co-optation.

Studying the contestation of norms by analysing the relations between and decoupling of norms, this article draws on international relations (IR) norms research on norm clusters – that is, the relations and linkages between norms (Fehl 2023; Fehl and Rosert 2020; Lantis and Wunderlich 2018, 2022; Winston 2018). The article contributes to this research by shedding light on the other side of norm relations – when hitherto related norms are decoupled. Specifically, I argue that norm entrepreneurs decouple related norms to reinterpret them in ways that undermine these norms, even though they refer to the same norm cluster in the same context.

¹Cf <https://reproductiverights.org/maps/worlds-abortion-laws>

²597 U.S. _

To illustrate the notion of norm decoupling, this article studies the US Supreme Court's three landmark cases on abortion: the 2022 watershed decision (*Dobbs*) to withdraw the right to abortion and its previous decision from 1973 (*Roe v Wade*),³ confirmed by the decision in 1992 (*Planned Parenthood of Southeastern Pennsylvania v Casey*)⁴ implementing the federal right to abortion. The thematic analysis inductively explores how interpretations that equally refer to liberal-democratic norms can erode these norms by interconnecting them and disrupting norm relations. This process is particularly visible in the abortion norm cluster, first in a shallower version of democracy based on decoupling majority votes from other democratic and substantial norms, and second in the decoupling of liberal-democratic norms from their gendered dimensions.

This article develops its argument by situating the case within IR norms research and introducing the notions of norms and norm contestation. It then highlights the relevance of relations between norms in norm clusters to elucidate the notion of norm decoupling before outlining the case study of the abortion norm cluster as well as the empirical material and method, and presents the findings on norm relations and decoupling in court decisions. The following section further elaborates on the two major decouplings – democratic votes and gendered norms – and presents an overall pattern of the abortion norm cluster.

Global liberal-democratic norms and their contestation

While the case study of the US Supreme Court focuses on a domestic institution, it is situated in and contributes to IR scholarship on the contestation of liberal-democratic norms globally. Its global relevance has four sources. First, the right to abortion and its contestation constitutes a global issue area around which numerous liberal-democratic norms and values converge, including self-determination, equality, liberty and freedom of choice. The World Health Organization (2022) identifies a number of human rights that engender a right to abortion, such as sexual and reproductive rights and the rights to privacy and non-discrimination. Denying women access to abortion generates serious economic and social effects, such as years-long economic hardship and insecurity, a heightened risk of poverty, curtailed education, a lack of economic and social participation, being forced to remain in violent relationships, and serious health problems (Foster et al. 2018b; Green et al. 2021; Miller, Wherry and Foster 2020), which also affect the children involved after a denied abortion (Foster et al. 2018a). The right to abortion is hence part of a liberal-democratic norm cluster (cf. Lantis and Wunderlich 2022). At the same time, the latter is not a homogenous, unitary block, but inherently dynamic, fuzzy and even ambivalent (Mende, Heller and Reichwein 2022).

Second, the abortion norm cluster underlines the close interaction between global and local norms (Acharya 2004). International human rights norms and global liberal norms shape domestic legislation on abortion (Boyle, Kim and Longhofer 2015; Fine, Mayall and Sepúlveda 2017). Likewise, domestic (particularly US) movements significantly influence global anti-abortion movements (Davis and Kaufman 2018; Sigvaldason and Ómarsdóttir 2022) to such an extent that 'global abortion rights [are] embedded in national democratic struggles over abortion' (Erdman 2016).

³410 U.S. 113.

⁴505 U.S. 833.

Third, studying the US Supreme Court highlights a phenomenon that is receiving growing attention in IR scholarship on the contestation of the LIO: contestation from within the liberal-democratic realm (Kreuder-Sonnen and Rittberger 2023). The rules that legally bind the Supreme Court are themselves part of the liberal-democratic norm cluster. The court thus represents a case of structured and rule-governed norm interpretation: it cannot randomly invoke just any norms or their interpretations, but has to apply the US Constitution.

Fourth, courts and justices play a major role in (re)interpreting global norms. They are norm entrepreneurs, as they are expected to independently interpret ambiguous laws (Garcia Holgado and Sánchez Urribarri 2023) in accordance with ‘deeply rooted norms of appropriateness’ (Stone Sweet and Sandholtz 2023: 120). While courts and justices can (be made to) weaken or strengthen liberal democracies in several ways,⁵ this article focuses on justices’ norm interpretations, which greatly influence norms’ ‘meaning-in-use’ (Wiener 2008: 5) – that is, their understanding in a certain context. This is because, in courts, ‘interpreting the existing rules to apply in new, and specific, situations constantly triggers conflicts over interpretation, and resolving these conflicts shifts the nature of the rules themselves’ (Winston 2018, 645; cf. Sandholtz and Stiles 2009).

Accordingly, this article draws on IR research on norms and norm contestation. IR norms research started with (and is still informed by) defining norms as standards of what is perceived to be appropriate or desirable behaviour in a certain context (Finnemore and Sikkink 1998: 891). Many understandings of norms have since been brought into the discussion, including broader and more flexible (Jurkovich 2020) as well as more dynamic and contestation-based approaches (Wiener 2014). Nevertheless (or for this reason), Orchard and Wiener (2024: 12) recapitulate that the question of what norms are is one of the ‘enduring questions that have not been answered by any of the three moves [of norms research] so far’. Therefore, and to avoid overlooking norm components that are pivotal to the liberal-democratic norm cluster, this article draws on a broad understanding of norms as ‘shared understandings’ (Orchard and Wiener 2024: 12), as ‘points of orientation and reference’ for actors in ‘indeterminate situations’ (Hofferberth and Weber 2015: 85). Norms can manifest in different ways, in laws, institutions or practices (Brunnée and Toope 2019).

This broad conceptualization is crucial for examining the multiple dimensions and components of norms, particularly in the context of legal interpretations. Legal norms’ dependence ‘on input through legal discourse, i.e. deliberation, jurisprudence, learned opinion and other discursive interventions’ (Wiener 2008: 68) notably includes social scientific as well as societal understandings of norms. What applies to international law also describes constitutional law: ‘nothing in this normative sphere is absolute’ (Jackson 2005: 19, also cf Clapham 2006). This is because the norms’ meaning-in-use is constantly evolving and affected by contestation and (re)interpretation. This can strengthen or weaken a norm, its robustness, validity or application (Krook and True 2012; Orchard and Wiener 2024; Wiener 2014; Winston 2018).

Norms can be contested in many ways, including unintended differing interpretations by localization (Orchard and Wiener 2024: 16), intended applicatory or validity contestation (Deitelhoff and Zimmermann 2020; Sandholtz 2019), discursive or behavioural,

⁵Cf., for instance, Garcia Holgado and Sánchez Urribarri (2023) on court packing; or Landau (2013) on abusive constitutionalism by amendment or replacement; or conversely, Huq (2018) on the courts’ role in safeguarding liberal democracies.

explicit or hidden forms (Drubel and Mende 2023), and proactive or reactive forms of contestation (Wiener 2020).

While norms are constantly contested through interpretation, which also might strengthen them (Wiener 2014), this article focuses on norm contestation that challenges (or even erodes) the LIO. Two forms dominate the (study of the) contestation of liberal-democratic norms: contestation by counter-norms – that is, norm collisions; and contestation by co-optation.

First and most visibly, liberal-democratic norms are under attack by norm entrepreneurs who explicitly challenge them by invoking colliding or counter-norms (Cooley 2021; Stoeckl and Uzlaner 2022; Wunderlich 2020). For instance, norms related to gender equality are countered by anti-gender and anti-feminist norms such as social hierarchy, biological essentialism (Sanders and Jenkins 2022b) or notions of an apparently natural family (Cupać and Ebetürk 2022: 2). These contestations engender norm collisions by bringing in conflicting norms, counter-norms, contradicting normative imperatives and/or colliding values (Peltner 2017; Saltnes 2018).

In the second form, liberal-democratic norms are challenged via co-optation. This describes the usage of norms that are part of the liberal-democratic norm cluster, but changing their meaning by putting them in a different context or by selecting only certain aspects of a norm: “Co-opting agents” hijack the norm diffusion process and disregard most of the normative content of the promoted norms while selectively employing the ones that are perceived to enhance their own position of power’ (Björkdahl and Gusic 2015: 266).⁶ Dixon and Landau (2019: 490) call a similar approach to norm co-optation ‘abusive constitutional borrowing’ – autocrats’ engagement and application of liberal-democratic norms in an attempt to pursue ‘processes of constitutional change that are actually anti-democratic in nature’. Co-optation thus refers to importing norms ‘outside the context in which they normally function’ (Dixon and Landau 2019: 494). This may happen from outside the LIO by authoritarian states or from within – for example, by illiberal governments or parties (Kreuder-Sonnen and Rittberger 2023; Levitsky and Ziblatt 2019). Norm co-optation thus also involves linking parts of a norm with different, anti-liberal norms or values.

Norm relations and their decoupling

Both forms of norm contestation, collision and co-optation, are pivotal to studying the contestation of the LIO. However, they do not sufficiently explain the US Supreme Court’s interpretation of the right to abortion and its effects on the LIO. This is because the Supreme Court does not simply contest liberal-democratic norms by invoking counter-norms or conflicting values such as the protection of the family or the assumption that women are primarily responsible for bearing and raising children. Nor does co-optation sufficiently explain how the anti-abortion justices undermine the liberal-democratic norm cluster by invoking the same norms as their pro-choice colleagues in the same context. Yet the *Dobbs* decision does challenge the LIO, given the relevance of a right to abortion for the protection of liberal-democratic values and rights such as equal participation, freedom of choice and liberty. For this reason, this article suggests two

⁶One can also subsume studies addressing a *mélange* or hybridization of liberal with illiberal norms (McNally 2020) under the ideal type of norm co-optation.

adjustments. First, it abstains from sharply distinguishing between norms and values. Second, it extends research on norm relations by considering their decoupling.

Regarding the first adjustment, the article argues that both forms of (studying) norm contestation in the LIO – norm collision and co-optation – implicitly or explicitly rest on a sharp distinction between norms and values. Winston (2018) defines a norm as consisting of a problem, the definition of which draws on a certain value that suggests a particular behaviour. This distinction between problem, value and behaviour as norm components is useful for understanding many forms of norm interpretation and contestation, particularly norm collision. However, in certain cases such a distinction may be unhelpful – for instance, because some phenomena can be described both as a norm and a value. Neutrality, for example, is considered a liberal value in some cases, whereas in others it is a prescriptive norm that guides appropriate behaviour (as for the Supreme Court justices).⁷ Another, more important reason is that values often imply a clear binary distinction. As Winston (2018: 640) explains, a value indicates that ‘the enjoyment or attainment of something [is] “good” or the avoidance of something [is] “bad” and, as such, gives moral weight to the problem’. This applies to cases of norm collision or co-optation – for instance, actor A considers liberty to be good, whereas actor B considers it to be bad. Accordingly, if the right to abortion is taken as a single norm (or value), then pro-choice actors consider it to be good and anti-abortionists regard it as bad. Remarkably, however, the Supreme Court justices do not state that abortion is bad. They refrain from any moral (i.e. value-related) considerations of this question altogether, and simply apply and interpret constitutional norms (parts of which some might call values). Hence the distinction between norms and values does not help us understand how diverging norm interpretations are rooted in the same norms and values in the same context.

Regarding the second suggestion, this article argues that the Supreme Court’s differing interpretations of shared norms can best be traced by studying the norms’ relations to other norms and their decoupling. This approach draws on norm research that examines the relations between norms instead of just single norms. These studies emphasize the relevance of norm clusters, inspired by research that highlights the embeddedness and contexts of norms and principles more generally (cf. Lantis and Wunderlich 2022: 8). They identify norm bundles containing several fundamental norms (True and Wiener 2019), norm linkages – that is, the co-occurrence of two or more independent norms (Fehl 2023), norm clusters as the multi-faceted relations between several problems, values and behaviour (Winston 2018), norm complexes capturing norm relations and norm interactions (Fehl and Rosert 2020), and norm clusters as collections of different norms related to a common issue area (Lantis and Wunderlich 2018, 2022). Much of this research examines how the relations between norms or their elements contribute to the norms’ resilience (Lantis and Wunderlich 2018) or diffusion (Winston 2018). At the same time, there is awareness that different norms within a cluster can compete with each other (Gallagher, Lawrinson and Hunt 2022; Lantis and Wunderlich 2022: 10). For instance, Fehl and Rosert (2020: 6) highlight that norms in a norm complex can not only overlap, be compatible, analogous or form synergies; their values can also contradict each other. Nevertheless, they conclude that ‘norm complexes, whether they are families, packages, or agglomerations, all share the characteristic that the diverse norms comprised in them are in some way positively associated with one another’ (Fehl and Rosert 2020: 10).

⁷Likewise, some of what Winston (2018: 651) calls values could be understood as norms, such as the preservation of sacred cows.

Accordingly, the starting point of this article is the relation between norms within norm clusters – that is, norms that relate to a common issue area and are somehow positively linked. Norm entrepreneurs may have intentionally created such norm relations (cf. Haas 1980) or norm relations may have developed structurally by virtue of their similarity or by co-dependence, when one norm builds the precondition for the robustness of another. Norm clusters usually involve both intentional and structural linking processes. Rhoads and Welsh (2019), for example, show that the ‘protection of civilians’ and ‘responsibility to protect’ norms (or norm clusters) have institutionally evolved in similar ways; actors may also link them to strengthen one or the other. Wallbott and Schapper (2017) explicate functional, political and legal processes linking different norms.

A small number of studies also address the issue of non-alignment between norms. Non-alignment refers to a norm entrepreneurs’ choice *not* to link separate norms that are well disposed to be linked. This might be due to a lack of knowledge or resources about linking possibilities, as Wallbott and Schapper (2017) explain with regard to human rights and climate politics, or a strategic choice not to link separate norms for pragmatic, cost-benefit or political reasons (Brown and Swiss, 2013; Rhoads and Welsh 2019; Wallbott and Schapper 2017). As Wallbott and Schapper (2017: 211) summarize, ‘tactics of negotiating actors do not only relate to their strategic choice of affirmative linkages.’ They also show ... through conscious and active non-engagement with possible linkages.’ However, non-alignment refers to separate norms. Hence, both perspectives – on norm relations and non-alignment – have paid less attention to how relations between norms within established norm clusters are being decoupled and disrupted. This is why this article emphasizes the notion of decoupling hitherto related norms.

The notion of *norm decoupling* has four distinct characteristics. First, it relates to norm clusters rather than individual norms; it thus applies to related norms, rather than potentially similar but separate norms (as is the case with non-alignment). This means decoupling is applied to norms that, up to the point of decoupling, have been (intentionally or structurally) related. Second, norm decoupling refers to processes that are enacted or pushed forward by norm entrepreneurs. It does not capture institutional or structural processes of diverging paths of norm evolution. The third distinct characteristic is that norm decoupling does not involve openly or explicitly invoking counter-norms or contradictory values, as is the case in norm collisions. Fourth, norm decoupling applies to differing norm interpretations within the same context. This distinguishes norm decoupling from norm co-optation, which describes strategically selecting individual norms to apply in different contexts. Taken together, the notion of norm decoupling explains how norm contestation that invokes shared norms generates conflicting interpretations by decoupling norms from hitherto related norms in norm clusters. It therefore illuminates the other side of norm relations: their disruption.

Case study: The abortion norm cluster in the US Supreme Court

This section presents an empirical analysis of the Supreme Court decisions on abortion, investigating which liberal-democratic norms the justices refer to and how they relate these norms to each other – or decouple them, respectively. As laid out above, I apply a broad understanding of norms as shared understandings or points of orientation. As the focus of my analysis is on the relations between and decoupling of norms, I neglect questions of differentiating between norm elements such as values or behaviour, which I subsume under the broad label of norms. I do, however, explicate differing dimensions of norms.

The inductive thematic analysis led to the identification of four relevant norms that both, pro and contra, sides refer to: the court's independence, the respect of moral values (which is understood to itself be value free), democratic decision-making, and liberty. In addition, the analysis reveals the relevance of gendered norm dimensions. Before presenting the results, this section briefly introduces the case study, the empirical material and the methodological approach. The remainder of the section discusses the major norms and their differing interpretations through relations and decoupling.

Research design

This case study focuses on the US Supreme Court's three landmark cases that have had far-reaching effects on the right to abortion: *Roe v Wade* (*Roe*), from 1973; *Planned Parenthood of Southeastern Pa v Casey* (*Casey*), from 1992; and *Dobbs v Jackson Women's Health Organization* (*Dobbs*), from 2022. *Roe*, for the first time, made the right to abortion mandatory at the federal level, meaning no US state could legally proscribe the practice. *Casey* reaffirmed *Roe* in all its essentials but shifted details related to its regulation and timing. Unlike *Roe*, *Casey* allowed state regulation of abortion in the first trimester of pregnancy, and introduced the undue burden standard which restricts the regulation of abortion if it puts an undue burden on the woman. *Dobbs* annulled both *Roe* and *Casey*, thereby withdrawing the constitutional protection of the right to abortion at the federal level and allowing states to strictly prohibit abortion, even from the moment of conception and in cases of rape and incest.

The court's opinions hence indicate clear positions for or against abortion. As the *Roe* and *Casey* judgments introduced and strengthened the right to abortion, the respective opinions of the court and concurring opinions represent the pro side, and the dissenting opinions the contra side. The reverse applies to the *Dobbs* decision and its concurring opinions (contra), and dissenting opinion (pro). Opinions that are partly concurring and partly dissenting can be neatly distinguished as arguing for or against a right to abortion as well. Only one opinion evades this distinction – that of Justice Roberts. He concurs in judgment with the *Dobbs* decision, but, referring to the principle of not judging more than necessary, he would not have withdrawn a right to abortion altogether, but only restricted it to the time before a fetus is viable. All the other documents either argue for (pro side) or against (contra side) a right to abortion (see Table 1). This distinction illuminates the two differing sides that nonetheless invoke the same norms.

In the case study, I retrieved all Supreme Court opinions (including dissenting and concurring opinions to those of the court) of the three landmark cases listed in Table 1⁸ and conducted a thematic analysis (Boyatzis 1998). This qualitative method is tailored to identifying relations between themes (here, norms), recognizing patterns and interpreting relations. In several rounds of inductive coding, I first identified the main norms that the opinions refer to or use to justify their argument, focusing on liberal-democratic and constitutional norms, but excluding unrelated pure legal-technical norms. I consider norms to be 'main norms' if they are referred to several times in a document or in multiple documents, or when both sides engage with them, often in back-and-forth discussions and mutual references. Both sides overwhelmingly refer to the main norm of the court's

⁸All documents are accessible online. *Roe*: <https://supreme.justia.com/cases/federal/us/410/113> and <https://sites.gsu.edu/us-constipedia/roe-vs-wade-1973>; *Casey*: <https://supreme.justia.com/cases/federal/us/505/833>; *Dobbs*: <https://supreme.justia.com/cases/federal/us/597/19-1392>.

Table 1. List of analysed documents

Year	Document: Case, opinion and Justices	Pro/contra right to abortion
1973	<i>Roe_Dissenting</i> Rehnquist	Contra
1973	<i>Roe_Dissenting</i> White (joined by Rehnquist)	Contra
1992	<i>Casey_Concurring–Dissenting</i> Scalia (joined by Rehnquist, White, Thomas)	Contra
1992	<i>Casey_Concurring–Dissenting</i> Rehnquist (joined by White, Scalia, Thomas)	Contra
2022	<i>Dobbs_Opinion</i> of the court (Alito, joined by Thomas, Gorsuch, Kavanaugh, Barrett)	Contra
2022	<i>Dobbs_Concurring</i> Kavanaugh	Contra
2022	<i>Dobbs_Concurring</i> Thomas	Contra
1973	<i>Roe_Opinion</i> of the court (Blackmun, joined by Burger, Douglas, Brennan, Stewart, Marshall, Powell)	Pro
1973	<i>Roe_Concurring</i> Stewart	Pro
1973	<i>Roe_Concurring</i> Burger	Pro
1973	<i>Roe_Concurring</i> Douglas	Pro
1992	<i>Casey_Opinion</i> of the Court (O'Connor, Kennedy, Souter)	Pro
1992	<i>Casey_Concurring–Dissenting</i> Blackmun	Pro
1992	<i>Casey_Concurring–Dissenting</i> Stevens	Pro
2022	<i>Dobbs_Dissenting</i> Breyer, Sotomayor, Kagan	Pro
2022	<i>Dobbs_Concurring</i> in judgment Roberts	Mixed

independence, which is related to the other three main norms; this helped me to identify the latter. In a second step, I assessed how the meanings-in-use of the main norms were invoked in arguments for or against a right to abortion. In a third step, I investigated the links between the norms, including their mutual references, to study how they are related to each other. This, in turn, highlighted the relevance of norm decoupling for the opposing norm interpretations.

The Supreme Court's independence

The Supreme Court's independence is a pivotal liberal-democratic norm that draws on multiple sources: it is a legal norm (and thus is legally proscribed); it is a political norm that is embedded in and formative of liberal political institutions; and it is a norm rooted in the democratic idea of the separation and/or mutual control of legislative, executive and judicial powers. Accordingly, both sides unanimously agree that the Supreme Court's role in a democratic society should be independent, guided only by the Constitution. Both sides overwhelmingly refer to this norm, which is why I identified it as a fundamentally

shared norm. Further analysis indicates that this norm is referred to in four dimensions – that is, substantial manifestations – of the norm, each of which has differing interpretations. These norm dimensions are: (1) preventing the court’s politicization; (2) restraining the justices’ subjective preferences; (3) containing the court’s power; and, most importantly, (4) maintaining the court’s neutrality.

In the first two dimensions – no politicization and no subjective positions – both sides refer to exactly the same arguments, precedence and quotes. They assert that the court’s decision should not be influenced by societal discussions, political struggles or public pressure on the issue, nor by its expected contestation and public opposition, all of which is denounced as the court’s politicization, which all agree must be prevented. ‘Instead of engaging in the hopeless task of predicting public perception – a job not for lawyers but for political campaign managers – the Justices should do what is *legally* right’ (1992 *Casey*_Concurring-Dissenting Scalia: 999, emphasis in original). Likewise, both sides agree that the Justices should ‘not substitute their social and economic beliefs for the judgment of legislative bodies’ (2022 *Dobbs*_Opinion of the Court: 65).⁹ Accordingly, personal, value-based, emotional, social, religious and experience-based perspectives should not obstruct decisions about whether abortion is a constitutionally protected right. Hence the opposing sides interpret these two norm dimensions largely identically. The small but vital difference is that each side accuses its counterpart of violating these norms.

In the third norm dimension of the court’s independence – containing the court’s power – again both sides strongly agree that the court’s power should be contained, but disagree on the definition of the court’s power. The contra side sees too much power when the court takes sides by allowing or prohibiting abortion (e.g. 1973 *Roe*_Dissenting White: 222). This assumes that the court remains neutral by not making this kind of decision. The pro side, by contrast, identifies a trespassing of the court’s power when it forces the moral assumption of one group (being against abortion) upon another group (struggling for the right to abortion). These interpretations are very closely connected to respect for moral values (discussed below) and the fourth norm dimension. The most visible differences appear in this fourth norm dimension – the court’s neutrality. Again, both sides agree that the court should be neutral, but disagree over how (and with reference to which other norms) neutrality is defined. The contra side frames neutrality as withdrawing from a constitutional decision: whether abortion must be allowed or proscribed. Accordingly, the *Dobbs* judgment does not *prohibit* abortion at the federal level; it instead withdraws the federal *right* to abortion. In this way, the argument goes, the court remains neutral. ‘The Constitution does not take sides on the issue of abortion. The text of the Constitution does not refer to or encompass abortion’ (2022 *Dobbs*_Concurring Cavanaugh: 2).

To justify this interpretation of neutrality, the contra side argues that abortion is such a highly moral (and morally divisive) issue that the Supreme Court cannot make this decision for society. Instead, that decision should be given back to society to be resolved via the democratic mechanism of voting (or a democratic process of amending the

⁹Both sides in the 2022 and 1992 cases refer to *stare decisis*, a legal principle that urges US courts to decide based on precedent rather than the justices’ individual values. It thus protects those who rely on the continuity of the court’s holdings. Both sides recognize the validity of this shared norm. Both sides also agree that in certain cases, under certain, well-specified conditions, prior court judgments may be overruled. The difference lies in the question of when precedent cases may nevertheless be overruled. Since the *Dobbs* decision overrules *Roe* as well as *Casey*, the court states reasons why its violation of *stare decisis* is necessary, whereas the pro side dismisses these reasons as too weak to justify the violation.

Constitution). Hence the norm of neutrality is related to the two norms of democratic decision-making and respect for moral values (both of which are discussed below).

The pro side agrees with relating neutrality to the morality of the matter; however, it employs a different interpretation of neutrality and its norm relations in two ways. First, while the pro side, in conspicuously similar words,¹⁰ agrees that the Constitution does not take sides on the question of abortion, it states that withdrawing the right to abortion does not circumvent, but in fact constitutes, taking sides. According to this perspective, the *Dobbs* decision is thus not neutral:

when it comes to rights, the Court does not act ‘neutrally’ when it leaves everything up to the States. Rather, the Court acts neutrally when it protects the right against all comers. And to apply that point to the case here: When the Court decimates a right women have held for 50 years, the Court is not being ‘scrupulously neutral.’ It is instead taking sides: against women who wish to exercise the right, and for States (like Mississippi) that want to bar them from doing so. (2022 *Dobbs*_Dissenting Breyer, Sotomayor, Kagan: 20f)

Therefore, rather than being neutral or not deciding on the issue, the *Dobbs* decision in fact has far-reaching effects. ‘Withdrawing a woman’s right to choose whether to continue a pregnancy does not mean that no choice is being made. It means that a majority of today’s Court has wrenched this choice from women and given it to the States’ (2022 *Dobbs*_Dissenting Breyer, Sotomayor, Kagan: 52).

This argument sheds light on a second way in which the pro side – while maintaining respect for moral values – believes *Dobbs* violates the court’s neutrality, namely by its failure to protect constitutional rights for everyone, especially the rights to choice and liberty.

Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage. Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code. The underlying constitutional issue is whether the State can resolve these philosophic questions in such a definitive way that a woman lacks all choice in the matter. (1992 *Casey*_Opinion of the Court: 850)

In sum, the diverging interpretations of the fundamentally shared norm of the court’s independence, especially its neutrality, manifest in the norm’s relation to other norms. The contra side relies heavily on the norms of democratic decision-making and framing abortion as a moral question. While the pro side also acknowledges abortion as a moral question, it emphasizes relations to the norms of choice and liberty. Below, I further analyse how these norms are employed and in which further relations they appear.

¹⁰‘This right is neutral on the question of abortion: The Constitution would be equally offended by an absolute requirement that all women undergo abortions as by an absolute prohibition on abortions’ (1992 *Casey*_concurring-Dissenting Stevens: 915).

Respect for moral values

Both sides agree that the question of abortion is a highly moral one that depends on personal beliefs and value judgements. They not only agree that this question is highly controversial and divisive in American society, but that each side's moral values and beliefs cannot simply be dismissed. In other words, the norm that is relevant for this argument is respect for moral values.

The contra side maintains that since abortion is a moral issue, the question of abortion is not a legal matter. It refers to another norm to strengthen this argument: the protection of foetal life. It takes a somewhat ambiguous stance on this norm. On the one hand, it persistently insists that the decision between protecting foetal life and women's rights is a moral one that the court does not want to make, thereby dismissing the protection of these norms as irrelevant to the court: 'our decision is not based on any view about when a State should regard prenatal life as having rights or legally cognizable interests' (2022 *Dobbs*_Opinion of the Court: 29). 'There is of course no way to determine that as a legal matter; it is in fact a value judgement' (1992 *Casey*_Concurring-Dissenting Scalia: 982).

On the other hand, the contra side frames the right to abortion as 'sharply' different from any other constitutionally protected rights to autonomy or privacy (2022 *Dobbs*_Opinion of the Court: 32), as 'sui generis' (1992 *Casey*_Concurring-Dissenting Rehnquist: 952), because it destroys foetal life. In addition, it emphasizes that the federal state has a legitimate interest in the protection of foetal life.

The pro side, by contrast, aspires not to impose a particular moral on others, but rather to protect people from others' moral codes. This protection is described as the core duty of the rule of law, which therefore constitutes abortion as a legal matter. The pro side reconciles the diverging moral values related to abortion by relying heavily on the norm of protecting different involved interests. These include women's choice and liberty on the one hand, and foetal life and the federal state's legitimate interest in regulating abortion on the other hand. In order to respect and protect these diverging moral values, the pro side highlights the importance of not simply dismissing one of the sides, but of finding a balance between the competing interests (discussed below).

In sum, the interpretations of the shared norm of respecting moral values differ regarding its relations to other norms. While the contra side emphasizes its connection to the protection of foetal life and democratic decision-making instead of perceiving abortion as a legal question, the pro side relates it to freedom, choice and the balanced protection of different interests.

Democratic decision-making

Instead of invoking decisively conservative or anti-feminist norms, the contra side hinges on another norm: democratic decision-making. It argues that abortion as a moral matter should be democratically voted on. 'Value judgments, after all, should be voted on, not dictated' (1992 *Casey*_Concurring-Dissenting Scalia: 1001). The *Dobbs* judgment repeatedly frames the question of abortion as a matter of state law, of democratic voting and political process rather than a (federal) legal matter. It justifies its decision to withdraw the right to abortion by claiming to give the decision back to the people, so that the court does not overstep its neutrality by implementing the justices' subjective values.

The pro side does not deliberate the norm of democratic decision-making as such, but relates it to the norm of liberty. A democratic process that is based purely on majority

voting does not suffice, according to the pro side, because it lacks the norm of protection (of liberty and choice):

While there is much to be praised about our democracy, our country since its founding has recognized that there are certain fundamental liberties that are not to be left to the whims of an election. A woman's right to reproductive choice is one of those fundamental liberties. Accordingly, that liberty need not seek refuge at the ballot box. (1992 *Casey_Concurring-Dissenting* Blackmun: 943)

Liberty

The pro side heavily connects its norms and arguments to the norm of liberty more generally. While the contra side hardly mentions liberty in relation to the norms discussed above, it does develop its own interpretation of the norm of liberty. The contra side puts forward three interpretations of liberty: a regulative, a historical and a procedural interpretation.

The first interpretation of liberty of the contra side is the norm's embeddedness in *regulation*. 'Our Nation's historical understanding of ordered liberty does not prevent the people's elected representatives from deciding how abortion should be regulated' (2022 *Dobbs_Opinion of the Court*: 31). In the context of abortion, due to the federal state interest and the protection of foetal life, the contra side argues that no protection of liberty is necessary against political processes such as majority votes. It grounds its argument in the concept of ordered liberty, by which it means that no liberty is absolute; it can (and must) be regulated. The right to abortion is different to any other right to liberty, the contra side argues, because it violates others' rights.

The second interpretation of liberty is *historical* in nature. One reason given for this is the opaqueness of the very term liberty:

Historical inquiries of this nature are essential whenever we are asked to recognize a new component of the 'liberty' protected by the Due Process Clause because the term 'liberty' alone provides little guidance ... 'We all declare for Liberty; but in using the same word we do not all mean the same thing.' In a well-known essay, Isaiah Berlin reported that '[h]istorians of ideas' had cataloged more than 200 different senses in which the term had been used. (2022 *Dobbs_Opinion of the Court*: 14)

Historical interpretations of liberty are grounded in the wording and historical context of the Constitution, particularly the legal principle of due process. Based on a clause in the Fourteenth Amendment, this principle 'has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty"' (2022 *Dobbs_Opinion of the Court*: 5). For this reason, the contra side repeatedly emphasizes the question of whether abortion has been part of the country's history and tradition. According to this perspective, it has not; hence the contra side does not consider the right to abortion a constitutionally protected liberty.

In a third reading, the contra side emphasizes a *procedural* rather than substantial interpretation of liberty:

the Due Process Clause at most guarantees process. It does not, as the Court's substantive due process cases suppose, 'forbi[d] the government to infringe certain

'fundamental' liberty interests at all, no matter what process is provided'. (2022 *Dobbs_Concurring opinion-Thomas: 2*)

This reiterates the argument that the federal state must restrict the fundamental norm of liberty. The contra side's lack of a substantial interpretation of liberty becomes clearer when contrasted with the pro side.

The pro side puts forward three interpretations of liberty as substantial, balanced and dynamic. First, the *substantial* reading of liberty draws heavily on the Constitution:

Although a literal reading of the Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least 105 years ... the Clause has been understood to contain a substantive component as well, one 'barring certain government actions regardless of the fairness of the procedures used to implement them'. (1992 *Casey_Opinion of the Court: 846*)

Accordingly, the pro side interprets the substance of liberty by relating it to a variety of other norms rather than perceiving it as isolated:

This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints. (1992 *Casey_Opinion of the Court: 848*)

These other norms include, first and foremost, equality, privacy, bodily integrity, protection, dignity and freedom of choice. What makes this so peculiar is not only the substantial interpretation of the norm of liberty, but also that the pro side relates all these norms very tightly to the lives and rights of women. I therefore explore the extent and meaning of the gendered dimensions of these norms in the subsequent section.

Second, given the number of substantial norms that have the potential to conflict with each other, the pro side also acknowledges the need for federal state regulation.¹¹ However, it does not emphasize regulation as such, but rather a *balanced* regulation of diverging interests to ensure that everyone's liberty is indeed protected. The pro side thus formulates the task of balancing diverging interests. It identifies the federal state's interest in protecting women's health, foetal life, an organized society and the interests of others such as family members and partners on the one hand, and reconciles the state's interests with women's liberty, privacy, freedom of choice and bodily integrity on the other hand. At the same time, the pro side argues, any federal state regulation must be justified very carefully and robustly, given the strength of the norm of liberty (e.g. 1973 *Roe_Concurring Douglas: 211ff*).

¹¹Note that the different cases and the partly concurring, partly dissenting opinions disagree on the extent of regulation – for example, at which time and in which forms a federal state may regulate access to abortion and how it may shape its interest in protecting foetal life. For example, in 1973 the court introduced the viability of the fetus as a decisive point of change, and in 1992 it introduced the measure of undue burden, both of which were controversially discussed among supporters. The point is that the pro side seeks a *balance* between differing substantial norms through state regulation.

The pro side's third interpretation of liberty engages with the legal norm of due process. It elaborates a *dynamic* reading of the Constitution's understanding of liberty rather than a static explanation that clings to original wording. The pro side draws its dynamic reading of the constitutionally protected right to liberty from the dynamics of history and society. It describes the context of the Constitution's founding as excluding women (as well as Afro-Americans) from society: 'But times had changed. A woman's place in society had changed, and constitutional law had changed along with it' (2022 *Dobbs*_dissenting Breyer, Sotomayor, Kagan: 15).

The pro side also justifies its dynamic interpretation with the intention of the Constitution's authors, who were well aware that society (and societal norms) are constantly evolving:

Great concepts like ... 'liberty' ... were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged. (1973 *Roe*_Concurring Stewart: 169)¹²

In sum, the norm of liberty serves as a pivotal point of reference for both sides. It also vividly demonstrates the relevance of social (in addition to legal) arguments for the norm's interpretation, justification and relations.

Gendered norm dimensions

As shown above, the pro and contra sides both refer extensively to the norm of liberty, yet they differ in how they incorporate and consider the gendered dimensions of liberty and its related norms – that is, the meanings and effects of norms that affect women differently than men, what may be called gendered norms and gendered norm dimensions. This difference also partly explains the variations in the interpretations of liberty as discussed above, and manifests in all three of the pro side's interpretations of liberty.

First, the norms alluded to in the pro side's substantial interpretation of liberty are not only referred to in a general way, but also in how they apply distinctly to women. 'This is because the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law' (1992 *Casey*_Opinion of the Court: 852). Liberty thus has different meanings for women, as related norms are affected differently as well. For instance, the norm of bodily integrity and health may be violated by the medical risks, physical changes, medical treatments, pain and psychological challenges associated with (unwanted) pregnancy and giving birth: 'restrictive abortion laws force women to endure physical invasions far more substantial than those this Court has held to violate the constitutional principle of bodily integrity in other contexts' (1992 *Casey*_Concurring-Dissenting Blackmun: 927).

Similarly, the norm of freedom of choice is inherently gendered, as the right to abortion concerns a woman's control over her body and over a number of further life choices, '[b]ecause motherhood has a dramatic impact on a woman's educational

¹²In a further argument dedicated to the history and tradition to which the Due Process Clause refers, the pro side contends that 'embarrassingly for the majority – early law in fact does provide some support for abortion rights' (2022 *Dobbs*_Dissenting Breyer, Sotomayor, Kagan: 13).

prospects, employment opportunities, and self-determination' (1992 *Casey_Concurring-Dissenting Blackmun*: 928).

Pregnancy and motherhood also affect the equality of women and the ways in which they can participate in society. 'Without the ability to decide whether and when to have children, women could not – in the way men took for granted – determine how they would live their lives, and how they would contribute to the society around them' (2022 *Dobbs_Dissenting Breyer, Sotomayor, Kagan*: 24). Hence it is the gendered norm dimensions that connect liberty with substantial norms such as equality, privacy, choice and bodily integrity.

Second, the balanced interpretation of liberty is also based on its gendered dimensions. This explains why, even though others' interests are involved and acknowledged – including those of the father, physician, (federal) state and foetal life – the interest of the woman must prevail:

[I]t would be reasonable to conclude as a general matter that the father's interest in the welfare of the child and the mother's interest are equal. Before birth, however, the issue takes on a very different cast. It is an inescapable biological fact that state regulation with respect to the child a woman is carrying will have a far greater impact on the mother's liberty than on the father's. (1992 *Casey_Opinion of the Court*: 896)

This approach does not simply juxtapose two contradicting static moral positions for or against abortion. Rather, it analyses the various interests at stake and takes into account the fact that women are more strongly affected by a decision about abortion than other involved and valid interests.

Third, the dynamic interpretation of liberty is also based on taking the norm's gendered dimensions into account. The pro side spells out the limitations of a static reading of the Constitution, which was also a product of its time, to justify the need to take societal and normative developments into account:

But, of course, 'people' did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women's liberty, or for their capacity to participate as equal members of our Nation. (2022 *Dobbs_Dissenting Breyer, Sotomayor, Kagan*: 14)

By contrast, the contra side does not simply reject the equality of men and women, or demand restrictions on women's liberty. It does not invoke anti-feminist counter-norms.¹³ In fact, it hardly mentions women or gendered norm dimensions at all. This is significant because the Court's opposing sides usually take notice of and react to each other's arguments. A possible explanation for this omission is that the contra side is anxious not to interpret the right to abortion as a gendered matter – that is, a matter that concerns women differently than men, as this would require different legal reasoning:

a State's regulation of abortion is not a sex-based classification and is thus not subject to the 'heightened scrutiny' that applies to such classifications ... The regulation of a

¹³The only exception is the dismissal of women's reasons for abortion as 'convenience' or a 'dislike of children' (1973 *Roe_Dissenting White*: 221).

medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a ‘mere pretext[t] designed to effect an invidious discrimination against members of one sex or the other’ ... the ‘goal of preventing abortion’ does not constitute ‘invidiously discriminatory animus’ against women ... Accordingly, laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures. (2022 *Dobbs*_Opinion of the Court: 10f)

Accordingly, the contra side advocates a non-gendered (apparently ‘neutral’) interpretation of the norms at stake (1992 *Casey*_Concurring-Dissenting Scalia: 980). It similarly argues that withdrawing the right to abortion would not affect reliance on the (previous) court decision and life planning because ‘reproductive planning could take virtually immediate account’ of this decision (1992 *Casey*_Concurring-Dissenting Rehnquist: 956). While the *Dobbs* decision acknowledges that it is difficult to assess how withdrawing the right to abortion would affect women, it chooses not to get involved with this question in the first place, again referring to the norm of the court’s neutrality (2022 *Dobbs*_Opinion of the Court: 65), framing the right to abortion as a democratic rather than legal matter, and pointing out women’s right to take part in democratic decision-making (2022 *Dobbs*_Opinion of the Court: 65).

A further strategy of the contra side is to decouple the right to abortion from other norms and their gendered dimensions, such as equality. The contra side states that the right to abortion simply does not affect these other norms:

Surely it is dubious to suggest that women have reached their ‘places in society’ in reliance upon *Roe*, rather than as a result of their determination to obtain higher education and compete with men in the job market, and of society’s increasing recognition of their ability to fill positions that were previously thought to be reserved only for men. (1992 *Casey*_Concurring-Dissenting Rehnquist: 956f)

The contra side also alleges that gender equality has been achieved in US society, which is why unwanted pregnancy does not represent the burden it might have in earlier times – for instance, because health insurance has improved, women can drop babies off in so-called safe havens and discrimination against pregnant women has decreased. (2022 *Dobbs*_Opinion of the Court: 33f)

The *Dobbs* judgment and liberal-democratic norms

This analysis of the norms, their relations and decoupling demonstrates that it is too short-sighted to frame the *Dobbs* decision as simply another straightforward example of the erosion of liberal-democratic norms by norm collision or co-optation. None of the pivotal norms referred to in the opinions is inherently non-democratic or anti-liberal. Rather, the debates center on shared norms that are inherently liberal-democratic (the court’s independence, respect for individual moral values, democratic decision-making and liberty) and are guided by the Constitution. Yet these norms may be in jeopardy when shared norms yield contradictory interpretations. The analysis illustrates that norm relations and their decoupling are important for understanding this risk.

The following sub-sections explain, based on the previous analysis, how liberal-democratic norms subtly are eroded, first by different versions of democracy and second

regarding the role of gendered norm dimensions. This is illustrated in an overall pattern of norm relations and their decoupling.

Different versions of democracy

The norm relations and decoupling illustrate two different versions of democracy. The contra side's adherence to decision-making processes via voting emphasizes the will of the majority, combined with trust in political institutions that decision-making procedures represent that will.¹⁴ The contra side's emphasis on majority decision-making concentrates on a single aspect of the liberal-democratic norm cluster and decouples it from others. The pro side invokes other norms from the liberal-democratic norm cluster, primarily the protection of rights such as liberty, equality, privacy, bodily integrity and freedom of choice against majorities and against an overly powerful judiciary. The contra side shares some of these norms as well: it invokes liberty and the Constitution, which is supposed to serve as the basis for liberal-democratic norms, but again in an isolated way, detached from societal and historical developments.

This decoupling is decisive for the quality of the liberal-democratic norm cluster because, even though majority voting represents a core democratic norm, its decoupling turns it into a repressive tool that populists who claim to represent the majority employ to exclude and marginalize minorities. The decoupling of majority voting from the protection of minorities and other liberal-democratic norms is akin to other developments as well, which slowly but steadily undermine democracy (Dixon and Landau 2019; Garcia Holgado and Sánchez Urribarri 2023; Peruzzotti 2017). Norm decoupling therefore fuels two different versions of democracy that manifest in four ways.

First, the contra side decouples majority voting from other norms that characterize liberal democracies. This is what most plainly puts the *Dobbs* decision into proximity with populism.

Second, the two sides differ on how to interpret the Constitution. The contra side's emphasis on history and tradition reflects an endeavour to interpret the Constitution in light of its framers' and ratifiers' 'original intent' (Levy 1988). By contrast, the pro side takes the historical and societal context into account and justifies this reading with the Constitution's openness, which is in line with what legal scholars call the 'living constitution' (Ackerman 2007; Kramer 2006). As the Constitution represents the foundation of US democracy, neither approach can simply be dismissed as anti-democratic.

Third, the contra side primarily invokes procedural interpretations of the norm of liberty. By contrast, the pro side's substantial interpretation allows it to link liberty to other norms (including equality, privacy, freedom of choice and the absence of suffering). This difference underscores that the broadly perceived proximity between liberal democracy and deliberative (understood as procedural) norms cannot subsist without substantial norms, even though their substance remains a matter of contestation and interpretation (cf. Mende 2023).

¹⁴In this context, it is also interesting how voting rights are a matter of contestation in the United States, particularly in the weakening of the Voting Rights Act of 1965 that prohibits racial discrimination in voting at the federal level (Berman 2015; Kenny et al. 2021). While evaluating such attempts at voter suppression is beyond the scope of the current study, my norm analysis highlights the importance of the interpretation of democracy.

Fourth, a major justification of the contra side's procedural interpretation of liberty is the reference to neutrality: the court claims it should remain neutral, especially on morally divisive issues. This highlights another major difference between the two sides: whether or not they take gendered norm dimensions into account.

The gendered dimensions of liberal-democratic norms

As shown above, the pro side links substantial norms to the life and experience of women, as they are most directly and pervasively affected by the court's decisions on the right to abortion. It thus takes the gendered effects of (both wanted and unwanted) pregnancy into account. This entails asking how the norms of liberty, freedom of choice, equality, privacy and bodily integrity affect women and birthing persons differently than men, given the physical and psychological aspects of pregnancy and giving birth, societally pervasive expectations that women will undertake a disproportionate amount of the care and childrearing duties, and societal contexts in which women are more strongly affected by inequality, discrimination, violence and poverty.¹⁵

Remarkably, the contra side does not invoke expressly anti-feminist norms. Rather, it frames abortion rights as gender neutral (!), rendering the discussion of gendered norm dimensions unnecessary. Accordingly, it scarcely mentions women.

This illustrates how the norm of neutrality feeds not only into liberal-democratic norms, but also explains the decoupling of norms from their gendered dimensions. Feminist theorizing illustrates how assumed neutrality is androcentric rather than neutral (Charlesworth 2002; Peterson 2000). The Constitution's reference to liberty and equality for all, for example, did not initially include everyone. It was still regarded as neutral because of its position in a context in which only white men were seen as full members of society. The persistence of gender inequalities in many societies inscribes gendered inequalities into many norms, including liberal-democratic ones. At the same time, taking the gendered dimensions of liberal-democratic norms into account does not preclude their universality – indeed, the situation is quite the opposite: liberty and equality for all can only be accomplished by factoring in their (gendered) dimensions, and accordingly their gendered obstacles (Mende 2018).

Against this background, it is not even necessary for the contra side to employ decisively anti-feminist (or anti-liberal or non-democratic) norms. Not taking the gendered norm dimensions into account has a similar effect, as it neglects the gender inequalities that are inscribed into these norms.

The abortion norm cluster

The present analysis establishes that all of the invoked norms represent liberal-democratic norms (see the outer circle in Figure 1). Both sides decisively share a number of these norms, particularly the court's independence and neutrality, liberty and respect for individual moral values. The differing interpretations of these norms can be explained by tracing their relations to and decoupling from other norms: isolated democratic voting on the contra side, and the relation to further substantial norms and balancing of interests on the pro side. In addition, only the pro side displays another layer, namely the gendered

¹⁵Differences in the effect of norms also apply to other social, economic and racialized differences.

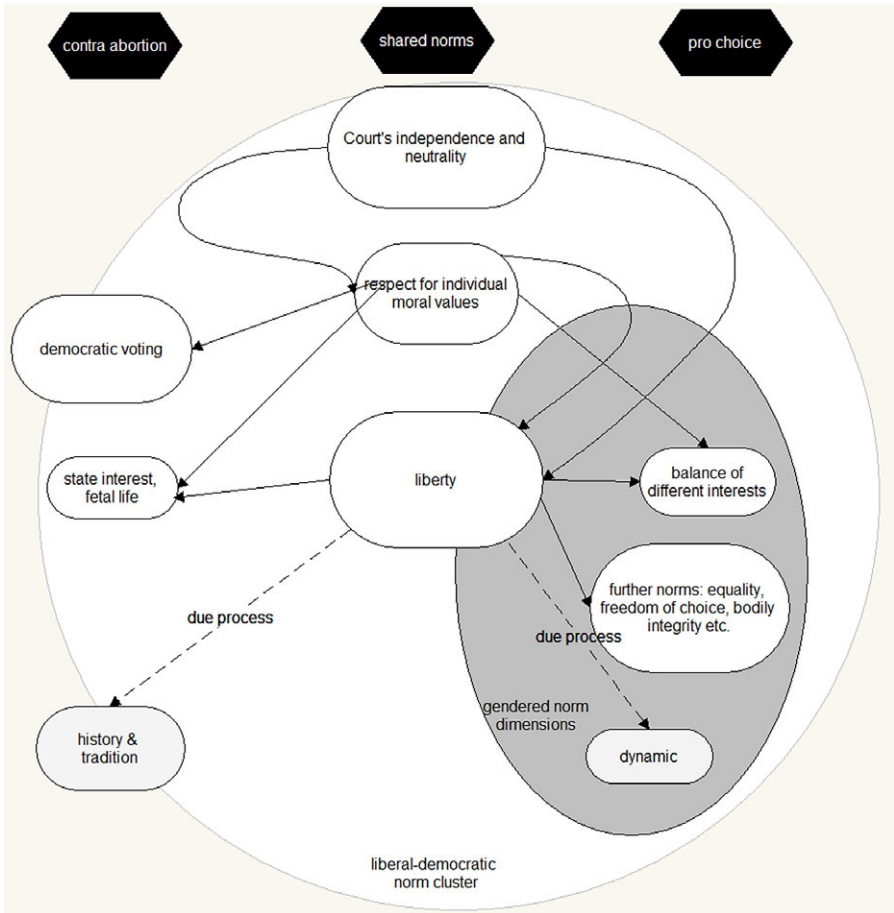


Figure 1. The abortion norm cluster.

dimensions of the invoked norms, from which the contra side’s interpretations are decoupled. The norm balloons’ *position* marks them as shared, contra or pro; and the *arrows* their relations to other norms. Dotted arrows indicate applicatory contestation.

Figure 1 also indicates that the dynamic or traditional interpretation of the due process norm represents differing norm applications rather than norm relations (balloons marked grey). The difference between history and tradition on the one hand, and a dynamic interpretation of liberty on the other hand represent diverging applications of the due process norm. By contrast, the Supreme Court’s discussions of the norms of liberty, neutrality and respect for moral values do not concern the question of how to apply, but rather how to interpret and relate, these norms.

Thus while both sides invoke the same norms, their diverging norm interpretations are determined by the norm relations and their decoupling. The contra side invokes the norm of democratic voting for its interpretation of neutrality and respect for moral values, and at the same time decouples it from other (liberal-democratic) norms as well as from gendered norm dimensions. The pro side relates neutrality and respect for moral values to

liberty, which it interprets by linking it to a range of other substantial norms; the contra side's interpretation of liberty is decoupled from these. In sum, the analysis of the norm cluster regarding both relations and decoupling between norms adds to norms research by shedding light on how shared norms can be interpreted in a contradictory manner.

Conclusion

This article has traced the interpretation of liberal-democratic norms in the US Supreme Court's landmark decisions on the right to abortion. It reveals that the factions for and against a right to abortion do not simply invoke counter-norms or colliding values, or selectively co-opt norms to apply them to a new context. Instead, Supreme Court justices adhere to a rule-governed process and invoke shared norms enshrined in the Constitution in what they portray as an attempt to avoid invoking arbitrary norms or imposing their own values. At the same time, the court's *Dobbs* decision has the strong potential to contribute to the backsliding of liberal-democratic norms.

The article has used an IR norms research approach to introduce norm decoupling of hitherto related norms as a distinct form of norm contestation, generating contradictory interpretations of shared norms. This notion contributes to the study of the quality of norm clusters and the different forms of their overt or more subtle contestation. While this article studied both norms and norm components (including values), future research may use the notion of norm decoupling to further distinguish between norms and their components (such as values, problems or behaviour) where such a distinction is appropriate. While this article examined norm entrepreneurs' actor-centred processes of norm decoupling through diverging interpretations, future work might also explore the question of norm decoupling through structural processes that dissolve norm clusters.

More generally, this article furthers our understanding of challenges to the LIO. While the nullification of abortion rights in the United States may not overtly draw on anti-liberal counter-norms, it has the potential to gradually erode liberal-democratic norms from within the LIO, signaling a more subtle form of democratic backsliding. As the article shows, the court's *Dobbs* decision does so in two ways. First, it advances two versions of democracy, contributing to a weaker, shallow version that isolates majoritarian votes from other, substantial liberal-democratic norms. Second, it fuels a misleading understanding of neutrality that ignores gendered norm dimensions and their differing effects in societies in which social, political or economic equality, as well as liberty, differ by gender.¹⁶

This study has demonstrated the relevance of relations between norms and their decoupling for the quality of norm clusters. The decoupling of norms from the liberal-democratic norm cluster may also undermine these norms globally. This complicates the simplistic dichotomy of democratic vs. non-democratic or western vs. non-western norms, as the dynamics of norms and their relations are much more complex. This is not to say that the liberal-democratic norm cluster should be preserved in a static way – quite the opposite, as this cluster is itself pluralist, dynamic and inherently ambiguous. Contestation can even provide an opportunity to overcome the LIO's gaps, exclusions, inequalities, blind spots and mistakes (also cf. Wiener and Orchard 2024: 273). But this

¹⁶The World Bank's latest report shows that in fact 'no country provides equal opportunity for women' (World Bank 2024: xiii).

depends on how norms are related and decoupled. And this urges our attention to norm relations and their decoupling beyond the usual dichotomies.

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