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Agency of the governed in global international relations: access to norm validation

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ABSTRACT

This article analyses two requirements that distinguish research on the 'agency of the governed': a better concept of ethics and moral values, and a better understanding of the effect of norm-generative practices. To operationalise empirical research on the conditions for, and effect of, the norm-generative agency of the governed, it discusses the crucial issue of local stakeholders' access to regular negotiations about norms. This includes the interpretation of regulations, treaties and conventions, which affect local decisions, as well as contestations of norms, which affect national, regional or global politics. It is argued that it is vital to identify the conditions of access to contestation, given the norm-generative effect of such practices of interpretation and contestation. Who enjoys access to contestation and how to establish regular access are therefore identified as important factors in having agency in global international relations. This article distinguishes between reactive and proactive contestation and presents the cycle model of norm validation to illustrate how the agency of the governed can be better researched.

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Introduction

This collection invites contributors to take a bottom-up perspective to the theme of the 'agency of the governed'. The theme is likely to raise critical questions about global governance and global society because it invariably brings the inter-relation between government, governors and the governed to the fore. It pegs the experience of 'governance' onto the 'governed', while entitling the latter to question that experience. This is an invitation to critically think about agency in the wider context of Global International Relations theory (hereafter: Global IR). Following interventions by scholars, including Acharya, Hurrell and Zwingel, Global IR is understood here, as a theoretical framework that addresses issues of global injustice by taking a bottom-up perspective on interactive practices. Global IR has both a normative and an empirical mission, for it aims to reach 'beyond critique'. Given this critical perspective on conventional IR theory, it is considered as the more encompassing theoretical frame.¹ While, picking up from the results of the mushrooming literature on norms research, contributors are encouraged to develop a critical position vis-à-vis 'conventional top-down images of norm diffusion and institutional transfer to the Global South'.²

The theme presents an important and innovative move in the field of norms research for two reasons, especially.

First, studying the potential for 'agency' brings back a long-term concern about ethics and moral values which IR theorists have recurrently addressed.³ Despite such well-voiced concerns first-generation social constructivists' emphasis on regulatory and constitutive norms (rather than evaluative and cultural norms) has largely favoured explanatory over critical or agnostic research frames.⁴ Centring on the 'agency of the governed' facilitates an opening in the field of norms research for the normative question about stakeholder's access to engage with norms (i.e. who has access to agency among the multiplicity of stakeholders). Second, the call to examine the agency of the governed allows for more detailed empirical research on the distinctness of 'agency', the effect of which is marked by culturally diverse conditions. In the best-case scenario, this research focus will allow for more detailed and systematic accounts of the diversity of stakeholders as the 'agency of the governed'. While, prior norms research has often bracketed agency through the generalising terminology of 'norm-followers', this focus on stakeholdership seeks to link practice to normative entitlement. This creates the conceptual space for considering the governed as bearers of agency: as the norm lies in the practice, agency reflects the norm-generative power that materialises *through* contestation.

Taken together these points highlight the value-added of this invitation to study the 'agency of the governed' through the lens of norms research, and taking account of recent theoretical advances in Global IR. As this contribution suggests, this innovative move stands to be achieved through better assessments of the normative conditions under which stakeholders operate, on the one hand, and more detailed understandings of how these conditions are affected by stakeholder interaction about norms, on the other. Both foreground the interplay between normative conditions and norm-generative practices as a previously under-researched spatio-temporal location in Global IR for research that seeks to examine how shared ground rules are constituted through practice, and how these practices ought to be facilitated.

To follow-up on these two issues, this article discusses the crucial aspect of local stakeholders' 'access' to regular negotiations about norms so as to operationalise empirical research on the conditions for, and effect of, the norm-generative agency of the governed. This includes the interpretation of regulations, treaties and conventions with effect on local decisions, as well as contestations of norms with effect on national, regional or global politics. It is argued that, given the norm-generative effect of such practices of interpretation and contestation, it is vital to identify the conditions of 'access to contestation'.⁵ The question of who enjoys access to contestation, and how to establish regular access to contestation is therefore identified as a pre-condition for 'agency' in Global IR. The point will be elaborated in more detail in the remainder of this article which is organised in three further sections. The first section details the argument; the second section introduces the proposed distinction between reactive and proactive contestation; the third section presents the cycle model of norm validation and illustrates how to study agency of the governed empirically with reference to the cycle model.

Mapping and enabling local stakeholders: a bifocal approach

Following Tully's Unfreedom of the Moderns and my own Theory of Contestation, this article picks up on the condition of inequality that marks the 'criss-crossing normative orders'⁶ of

global society due to the 'diversity premise' in Global IR.⁷ It takes that condition of inequality as an on-going challenge for a research programme that centres on the problematic realisation of 'agency of the governed', and which calls for better normative and empirical research to counter that position. As I have argued previously, the 'legitimacy gap' in global governance must be 'filled' rather than 'bridged':

Following the central insight from public philosophy that contestedness both indicates and generates legitimacy, I argue that the legitimacy gap stands to be filled (rather than bridged or closed) based on the principle of contestedness, which warrants access to regular contestation for all involved stakeholders. Crucially, it follows from the bifocal approach that while contestedness is a normative meta-organising principle; its legitimisation depends on how sector-based organising principles (such as, for example, the principle of equity, the principle of common but differentiated responsibility (CBDR) or the responsibility to protect) are derived through contingent circumstances in selected sectors of global governance.⁸

Accordingly, the bifocal – empirical and normative – approach begins from examining 'practice' (i.e. stakeholder engagement in conflict) rather than 'principles' (i.e. universal principles of governance). This normative, yet, practice-based approach, centres on conflictive encounters. The 'political approach' to recognition theory terms these 'struggles over recognition'.⁹ While, practices are always normative and per se constitutive for meaning, their effect inevitably differs pending on context and agency. In the best-case scenario, conflictive encounters generate agreement on a compromise about the ground rules of governance. Ground rules include organising principles, such as, for example, the principle of CBDR which was constituted through iterated interaction in the sector of global climate governance. Ground rules are of particular importance, for they reflect the local appropriation of global norms through stakeholder engagement. The generation of these ground rules (or 'organising principles')¹⁰ and their allocation at the meso-level of a given governance sector represents a step towards filling the legitimacy gap. This is well-reflected in more recent United Nations (UN) policy on the global diffusion of the rule of law, for example. The programme focuses on the rule of law in conjunction with specific development initiatives so as to facilitate engagement with the rule of law from below.¹¹

As Park and Vetterlein have convincingly demonstrated based on research on development policies, the perception of a norm's appropriateness increases with the degree policy norms are actually 'owned' by involved stakeholders.¹² Against this backdrop, it follows that for empirical research that seeks to establish whether 'agency of the governed' has been or how it ought to be achieved, a key task for norms research consists in identifying the degree to which stakeholders in selected sectors of governance are free to implement a norm (i.e. the option to reject), and able to change the meaning of a norm (i.e. the option to engage with). The two options are distinguished by differentiating reactive and pro-active contestation. And they are empirically probed with reference to specific stages in the norm implementation process. To operationalise empirical research, three practices of norm validation are distinguished (i.e. formal, habitual and cultural). In principle, all practices ought to be accessible to all involved stakeholders, yet, this is not the case in practice. Empirical research will therefore seek to identify who has access to which type of norm validation. Agents with access to all three practices have a higher probability for developing not only norm-generative but also transformative agency than those with access to only one or two of the three practices.

Given the collection's focus on empirical research that is of relevance for third world thematics, in particular, this article will emphasise the empirical dimension of the argument, insofar, as it details the research operationalisation phase of a potential research programme

on the agency of the governed. The approach will be 'bifocal', that is, empirical research is in principle and in practice subject to normative reflection. This is the premise for norms research that takes into account the 'intersubjective' roots of norms,¹³ the 'interactive' condition of international law¹⁴ and the 'dual quality of norms' as structuring and constructed at the same time.¹⁵ It is a condition for understanding the effect of the discrepancy between consensus about fundamental norms such as human rights, the rule of law and democracy on the one hand, and dissensus about their implementation based on standards and regulations, on the other, in global international relations. Its relevance is of particular if not exclusive relevance in post-enlargement or post-conflict scenarios: whether following the accession to a larger regional organisation or the overthrow of prior government representatives, political institutions undergo significant change, while socio-cultural institutions such as layered meaning and cultural knowledge prevail. In this context, the negotiation of ground rules of governance is key. The main question in such situations becomes therefore: who has access to the contestations which are constitutive for these ground rules? To elaborate on this question, the following presents a cycle model that takes into account of (1) stages of norm implementation in relation to (2) scales of global international relations and (3) practices of norm validation. Following the prior distinction between reactive and proactive contestation, this model identifies nine 'locales' where empirical research begins to reconstruct the conditions under which contestation is practiced, thereby taking into account the two options of either opposition to, or proactive engagement with, a norm, respectively. Notably, the bifocal approach underlying the cycle model, reflects research assumptions of both, the more explanatory minded and more normative minded approaches in the norms literature. It therefore might turn out as a helpful reference frame for further research on agency within the wider field of Global IR.

The argument builds on Tully's practice-oriented perspective which holds that justice is achieved through 'doing', i.e. engaging with rather than deciding about norms. To overcome the detachment from interaction in political struggles on the ground, Tully suggests turning directly to the 'field of interaction in which the conflict arises'.¹⁶ This principled premise for focusing on 'conflict' has been echoed by cutting edge pragmatist research in IR that proposed to 'zoom in' on sites of practices in order to derive insights about layered cultural meaning and knowledge.¹⁷ The pragmatist method of 'zooming in on a distinct practice, a crisis situation, or an object'¹⁸ is helpful for examining both practices of contestation. They facilitate a perspective on detail that allows for identifying their specific and distinct effect on normative substance. These include for example, the allocation of 'normative grids'.¹⁹ The term has been coined by the legal and critical constructivist IR literature to capture practice-based normative structures. They are similar to the well-known routinised practises or soft institutions identified by the policy literature. Normative grids are constituted from below: They make visible normative structures of meaning-in-use; and they emerge in contexts where meanings of norms are bound up in and through normative agents' practices and thus, orient these agents in their everyday business.²⁰

If stakeholders' access to contestation of the norms that govern them is an indicator for sustainable normativity, research on access to contestation helps to identify the conditions which enable or constrain access. Regular access to proactive contestation based on institutional pathways that identify sites, where stakeholders negotiate normativity enables normative agency to derive shared ground rules. To address the central research question of who has and who ought to have access to partake in negotiations of normative meaning

on the ground, for Global IR, this raises the interrelated key question of who are the legitimate stakeholders in any given context, what are the conditions of their access to contestation? Both stand to be identified empirically and evaluated with regard to normative principles. The following section first differentiates between reactive and proactive practices of contestation in order to identify the potential for normative agency taking into account conceptual distinctions. The next section then details the three practices of norm validation to indicate access to the sites where these contestations take place. When both are empirically identified, access to contestation, and therewith, the potential for agency that is available to involved stakeholders at these sites, becomes possible by taking into account the context conditions in a given conflict situation

Reactive and proactive contestation

Despite early calls to reflect the contingency of intersubjective validity claims,²¹ by and large constructivists have effectively achieved the separation of norms from their generation – and on-going re-enactment – through practice.²² While, norms and especially, their meanings are now increasingly perceived as contested by the norms literature, the explanatory norms literature nonetheless largely conceptualised norms as social facts.²³ That is, the analytical value-added of the norm has mostly been devised from a norm's stable quality, and less from its contested substance.²⁴ Taking into account the growing contestation literature,²⁵ this article seeks to especially emphasise the latter in order to answer the leading research question about stakeholder access to contestation. By taking such ethical questions more seriously, norms research begins to close in on the 'is/ought' distinction which has long been considered a challenge for IR theory.²⁶ As noted above, the perspective on agency is practice-based, and the analytical approach is bifocal so as to capture norm-generative effect of contestatory practices. To examine practice as an indicator for agency, and gather the relevant empirical data, two differentiations are proposed: the first consists in the differentiation among two practices of contestation (reactive and proactive); the second distinguishes three practices of norm validation (formal, habitual and cultural). It is suggested, that enhanced knowledge about, how practices and principles of contestation play out in selected contexts of global society, will indicate stakeholders' moral capability to develop 'agency' based on access to contestation. The latter is expected to shed light on the conditions of political responsibility, and, more generally, agency with regard to decisions about, what 'ought to be done'.²⁷

If all practice is normative, then norms research needs to be able to take account of, and account for the normative effect of contestation. It is argued that, once we understand how and when contestation is practiced in a reactive or in a proactive way, we will also be able to identify the conditions for sustainable normativity in a given socio-political context. As a reactive practice, contestation is indicated as an objection to norms. By contrast, when conceptualised as a proactive practice, contestation is undertaken in order to engage with norms. The latter normative position is based on the putative definition of the legitimacy of a given normative order as depending on whether or not those governed by this order have access to contest norms of governance. The higher the potential for engagement with norms, the more legitimate becomes the order of which they are part. To facilitate this engagement, institutional pathways that enable stakeholders to partake in processes of norm validation are required. As empirical research has indicated, access to norm validation is not equally

distributed among the involved stakeholders. While, this is obviously due to formal constraints that are given by the context of international relations which is governed by international law and a set of political institutions that facilitate its proper implementation, the social environment in which norms are interpreted plays a crucial role. To lawyers it is a condition *sine qua non*, when interpreting the law. And it has long been common knowledge that norms are embedded in a social environment that is constitutive for a norm's generation and implementation.²⁸

However, the focus on a given norm, such as, for example, the prohibition of torture or the ban on landmines²⁹ in order to examine its effect, has largely bracketed the diverse types of practices involved in on the generation of normative quality. This has resulted in under-appreciating the 'transformative effect of practices'.³⁰ Yet, this effect is key when assessing 'agency of the governed' in Global IR. While, the field is well established with regard to research on the conditions for norm implementation, diffusion or robustness, in IR theory there is little data or theory on norm generation. If all practice is normative, and if normative meaning differs according to social context, then the interrelation between practice and normativity is key. Yet, so far, norms research knows relatively little about how normativity is generated through practice. To fill that research vacuum, the following draws on Owen and Tully's 'political approach' that begins with a conflict instead of a norm, and then turns to 'struggles over recognition' about a norm. The approach studies contestation as an organic interactive process. Accordingly, political 'struggles over recognition' are to be differentiated from theoretical approaches which study 'struggles for recognition' and which are spelt out in terms of a theory of justice or a theory of ethical life.³¹ This article's argument about including the norm-generative aspect of contestation follows up on that political approach.

Accordingly, and in view of this collection's specific focus on agency of the governed, it proposes to broaden and deepen the conceptual frame of norms research by studying the potential effect of proactive engagement with norms.³² This approach begins from the concept of civic freedom as a condition for legitimacy in any societal context. It centres on agents and their relation with the norms that govern them. Accordingly, contestation and its origin in 'conflict' is perceived as an opportunity to allocate and account for the particularity of validity claims. These particular validity claims come to the fore in conflictive encounters about norms.³³ In order to identify, how progress is made, that is whether and to which extent, agency of the governed is achieved, empirical research reconstructs stakeholder engagement about norms. This depends on whether proactive contestation is possible, rather than leaving the much more restricted option of merely objecting to a norm. A research framework to identify this distinction would need to facilitate the tools to reconstruct the distinct practices of contestation.

Given the distinct effects that follow from the option to object to norms (reactive contestation) and the option to critically engage with norms (proactive contestation), the tools must allow for disaggregating data on both. Effectively this involves the epistemological understanding about the effect of norm-generation that is both reconstitutive (i.e. behaviourally induced) and purposeful (i.e. normatively induced). Both are social constructions, to be sure.³⁴ Yet, the former brackets normativity, while the latter addresses it expressly. For example, a struggle over recognition is triggered by contestations among several agents about norms (where the agents are from culturally diverse international root contexts). It is both an indicator of the degree of access (i.e. the affected agents has access to proactive contestation) and of normative change that is constituted through practice (i.e. the outcome

of proactive contestation). The outcome is therefore the result of a dialogical relationship that involves layers of global society beyond the directly involved contestants. For,

(D)ue to the relational character of recognition this consideration holds not only for the members of the minority seeking recognition, but also for the other members of the system of governance, whose present form of recognition *and corresponding rights to resources* will be affected by any alteration in the prevailing norms of mutual recognition of the members. Thus, to ensure that a new norm of mutual recognition is acceptable by all, it needs to pass through an inclusive dialogue or what we should call a ‘multilogue’.³⁵

The effect of this dialogical relationship depends on the conditions under which involved stakeholders obtain access to regular contestation. These conditions are addressed with reference to the cycle model that distinguishes three practices of norm validation (compare Figure 1).

To sum up: while, all practices are constitutive for meaning, two questions matter beyond the mere constitution of meaning. The first question asks whether a practice is ‘reconstitutive’ of meaning that exists prior to the incident of contestation; and the second question asks whether a practice is qualified as reactive (i.e. spontaneous, intuitive, habitual) or as proactive (i.e. strategic, normative)? Drawing on Searle’s definition of a constitutive rule as ‘x counts as y in context C’, Frost and Lechner argue that the notable and distinctive quality between Wittgensteinian practice and Aristotelian praxis is that the latter is not conceptualised as reconstitutive.³⁶ It follows that the central indicators for norm contestation both as an objection to norms and as a critical engagement with norms are first, whether the practice is conceptualised as ‘re-constitutive’ insofar as existing normative structures of meaning-in-use are taken into account and changed through mere ‘reaction’ (Wittgenstein, Bourdieu), and second, whether engaging the normative structures of meaning-in-use allows for strategic normative change through purposeful and normative ‘pro-action’ (Forst). Taking into account these qualifications of practice, it is proposed to work with a general and somewhat

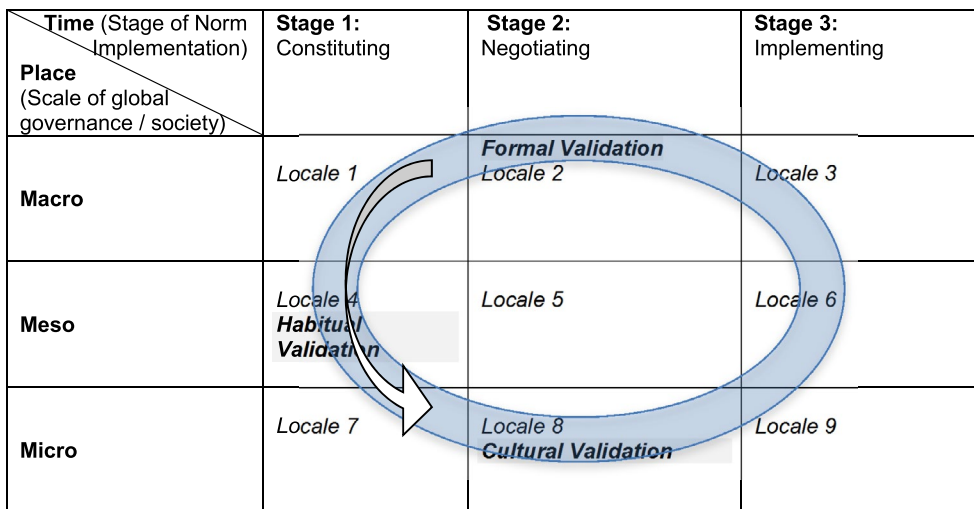


Figure 1. Practices of norm validation on the cycle of contestation. Source: Adaption from Wiener 2014, 21. Notes: With regard to the cycle model, the three practices of validation are meant to be on the cycle; the arrow indicates the *normative* condition that, in principle, each practice ought to be accessible for all stakeholders at all times; yet, in practice, this is not the case. To document that, *empirical* research examines which are accessible to whom. This is achieved through the method of zooming in to the locale where norm conflict is evident.

simplified distinction between reactive contestation as an act of objection vis-à-vis a norm (and therefore, observable), on the one hand, and proactive contestation as an act of critical engagement with a norm (and therefore, purposeful constitution), on the other. To focus on situations of normative conflict, the following section distinguishes three practices of norm validation and the conditions under which they are available to stakeholders, to address the question of who has access to contestation.

Three practices of norm validation: access to contestation?

In contradistinction to the first-generation constructivists' relatively narrow focus on norms as collectively held standards of behaviour, current norms research applies a broader definition of norms 'as ideas of varying degrees of abstraction and specification with respect to fundamental values, organizing principles or standardized procedures'.³⁷ It follows that normative crises emerge when norms no longer 'resonate across many states and global actors' and 'official policies, laws, treaties and agreements' are no longer constitutive for the stabilising effect of norms (Ibid). The types of norms that matter to the field of norms research have been defined according to their relevance for the agents dealing with them. This enabled a distinction among meta-norms that work at a higher level of morality and abstraction and ordinary or policy norms that are located closer to the policy process on a time scale.³⁸ In addition to Müller's distinction between 'meta-norms' and 'ordinary norms' I have previously distinguished three norm types on the scale of their respective moral reach (wide, medium, narrow), and the level of governance and/or the societal layer (macro, meso, micro). Table 1 demonstrates how both indicate the expected degree of contestation.

Fundamental norms are negotiated at the macro-layer of global society by representatives of government (*type 1* norms); organising principles are constituted through policy and political practice at the meso-layer (*type 2* norms) and are less likely to be contested; standards and regulations are implemented by designated norm-followers, such as firms or individuals at the micro-layer of global society (*type 3* norms). As the norms with the narrowest moral reach, the latter are least likely to be contested substantively, but most likely to be opposed or rejected writ-large. Notably, proactive contestation is highest with type 1 norms, whereas reactive contestation is highest with type 3 norms.

Different from the familiar norms literature which employs two validation practices, I have previously distinguished 'three segments on the cycle of norm validation (i.e. formal validation, social recognition, cultural validation)';³⁹ which allow for the addition of cultural

Table 1. Norm types.

Norm				
Type	Examples	Level	Moral Reach	Contestation
Fundamental Type 1	Human rights, Rule of law; Democracy, sustainability	Macro	Wide	More
Organising principle Type 2	Common but differentiated responsibility; Responsibility to protect; Rule of law mechanism; Total allowable catch annual percentage allocation	Meso	Medium	Medium
Standardised procedures, regulations Type 3	Responsibility to protect pillars; Specific rule of law implementation; Electoral rules	Micro	Narrow	Less

Source: Adaption from Wiener 2008, 66.

validation as a third practice that draws on individual everyday experience. The widely shared assumption among norms researchers is that, while fundamental norms *per se* entail universal validity claims, their translation into distinct contexts is inevitably linked with interpretation on the ground. Normative meanings therefore, vary according to the range of particular validity claims that are brought to bear in international encounters. To account for this variation norms research has turned to the social environment in which norms are interpreted. To that end, the concept of habitual validation, or social recognition, was introduced by social constructivists in the 1990s. The cycle model adds a third dimension to take account of the impact of everyday practices also defined as background experience of individual agents which is defined as 'cultural validation'.⁴⁰

In the context of international relations, formal validation is expected in negotiations involving committee members of international organisations, negotiating groups, ad hoc committees or similar bodies involving high-level representatives of states and/or governments. It entails validity claims with regard to formal documents, treaties, conventions or agreements. Social recognition (which in the language of IR has come to replace March and Olsen's original argument about habitual acknowledgement of unwritten rules)⁴¹ is practiced habitually and therefore depends on the context of social groups. Social recognition entails validity claims that are constituted through interaction within a social environment. The higher the level of integration among the group, the more likely becomes uncontested social recognition of norms. Different from formal validation where validity claims are explicitly negotiated, social recognition reflects mediated access to validity claims qua prior social interaction within a group. Cultural validation is an expression of individual expectation mediated by individually held background experience. Importantly, the qualifier 'cultural' is used to distinguish individual from group practices. It refers to background experience derived through everyday practice and as such carries a thin rather than a thick meaning of culture.⁴² To achieve the highest degree of shared recognition, in theory all three practices of validation should be equally accessible to all stakeholders. Given the practicalities of global governance and the conditions of societal differentiation, however, in practice the locales where norms are interpreted at the distinct stages of implementation are not equally accessible to all relevant stakeholders. That is, for reasons of practicality, sectoral necessity and political organisation the standards of access will rarely achieve the highest possible degree. This degree of access to contestation is achieved when normative sustainability is devised through practice and organising principles have evolved through critical engagement with norms at the meso-scale. Access to this proactive contestation depends on the *locale* where the norm is addressed.

Access to contestation: the cycle model

If the concept of access to contestation addresses constraints and opportunities of stakeholders' engagement at any locale where they encounter themselves governed by a norm,⁴³ access to contestation depends on the site where the norm is addressed. These sites are labelled as 'locales' in Figure 1. It follows that locales are indicated by stakeholders' validation practices in relation to time, which is expressed by the stage in the process of norm implementation (x-axis), and with reference to place, expressed by the level/layer of governance/society (y-axis). Each locale is identifiable with reference to the three main stages in the process of norm implementation and the three layers of societal order. It is the site, where

important empirical information stands to be gathered. In addition to the distinction between norm-types, the concept of norm validation demonstrates how access to contestation indicates the potential degree of norm-ownership.

At each locale agents encounter a contingent context that enables or constrains distinct options of access to three practices of norm validation: formal, habitual and cultural. While, in the best-case scenario agents enjoy access to all three practices, in most cases, this access is likely to be available to only a selected few, rather than the many. The grids underlying the cycle demonstrate the possible combination of locales for norm validation. The arrow on the cycle indicates the normative condition for the best-case scenario, namely that each of the three practices of norm validation, become available for the stakeholders affected by a norm. They therefore help localise empirically, where and when reactive contestation stands to be expected in the process of norm implementation. Relatedly, they also point to the locales where facilitative conditions for proactive contestation ought to be established. Sociological research on norms has generated manifold data to map distinct patterns of access to contestation on behalf of the variety of stakeholders. They are distinguished by the type of actor (i.e. state or non-state), role in the process of norm implementation (i.e. norm-setter or norm-follower) and socio-cultural background experience (i.e. individual everyday context). While, the former two have been thoroughly studied by social constructivists, the latter have been predominantly addressed by more recent pragmatist and Bourdieusian research.⁴⁴

The model entails nine ideal-typical locales which are inferred from stages in the norm implementation process and scales of Global IR. They allow for empirical research to zoom into each locale, assess the conditions for access to contestation, and hence, establish the effect of constitution and contestation of norms to counter injustice in global society. It is proposed to use this frame in order to integrate dissensus (contestation) and consensus (constitution) about norms. With regard to identifying potential for stakeholders' agency of the governed in Global IR based on empirical research, the cycle model pinpoints the central research question to close the gap between universal and particular validity claims of fundamental norms thus: Given the interplay between different types of norms, and practices of norm validation, what is the highest set of *type 2* norms, that is aggregated through cultural validation of *type 3* norms?⁴⁵ Norm clashes indicate the locales for empirical research to study the sources of conflict. Accordingly, the model has been used to study contestation in international encounters in the sector of fisheries governance (objecting to the rule of law and the norm of sustainability in the North West Atlantic Ocean including the objecting stakeholders of Canada, Spain and the EU), contestation with regard to constitutional culture (objecting to the rule of law in the European Union, including the objecting stakeholders of the Polish governing party PiS, the European Commission, the Venice Commission, Polish Civil Society actors) or development governance spanning the UN's global north and south (objecting stakeholders include governments of target countries).⁴⁶

Effectively, research that undertakes the mapping of a contested norm identifies grids that reveal uneven distribution of access to norm validation (i.e. the lack of normative agency). A map demonstrates a situation where the power balance is tipped in favour of agents who obtain agency through access to multiple practices of norm validation. Enhanced access implies better norm ownership increases and vice versa. As noted in the outset the two paths of norm research which differ with reference to their respective emphasis on either sociologically descriptive or the normatively prescriptive research quality are not

incommensurable. The opposite is the case. Notably, normatively prescriptive approaches are strongest in their explanatory potential for contested *type 1* and *type 2* norms. However, they are less helpful with regard to examining preferences for implementing conflicting *type 3* norms. In contrast sociologically descriptive approaches that are not interested in qualitative norm change on the meso- or macro-layer but in opportunities and constraints of norm implementation on the ground without changing the norm mainly focus on *type 3* norms i.e. norms without moral validity claims. Examining the effect on norm change through practice makes it possible to identify moments in which norm clashes occur through reactive contestation of individual agents, if and when they cross socio-cultural boundaries. It is addressed by distinct practices of norm validation.

Further applications of the model to examine other situations of conflict about fundamental norms (*type 1*) in Global IR may for example, address the ban on torture (as contested in the *Rumsfeld* case⁴⁷) or the responsibility to protect the fundamental rights of individuals (as contested in the *Kadi* case⁴⁸). A brief reference to the former illustrates this as follows. If, for example, a breach with the torture taboo according to the UN Convention on Torture⁴⁹ on behalf of a group of state representatives is contested by a group of non-state actors, such as lawyers and advocacy groups, then focusing on the locales indicated by the 'norm implementing stage' on the x-axis and the micro-scale of Global IR will allow further empirical research to identify contestations of the rules in place to prevent torture. This was well demonstrated by the *Rumsfeld* case, where US American breach of the torture ban was contested by a German human rights lawyer referring to the German Code of Crimes Against International Law (GCCAIL) on behalf of four Iraqi citizens and a US American NGO located in New York.⁵⁰ As the legal case was brought, contested and followed-up, an increasing number of stakeholders raised similar issues.⁵¹ In the process, institutions were set up in support, strategic litigation networks formed, and channels of access to contestation of breaches with the torture ban have been established.⁵²

The *Rumsfeld* case on the contested regulations of the torture ban therefore, demonstrates that the recognition of a fundamental norm of international law, in principle, may indicate that it is stable. However, this knowledge does not allow for conclusions about whether or not a norm is actually respected in practice. Focusing on this typical international interactional setting of conflict demands more detailed research applying the cycle model to identify how these proactive contestations have played out within and across the boundaries of the criss-crossing normative orders in Global IR.

Conclusion

This article asked which stakeholders have access to contestation, to assess and address the conditions under which 'agency of the governed' becomes possible in the first place. To that end, it advocates a bifocal – empirical and normative – approach and a practice-based starting point to norm conflicts. Two conceptual differentiations lie at the centre of the argument: the first, distinguishes between types of contestation; and second, differentiates between distinct practices of norm validation. It argued that while, in principle, all stakeholders ought to enjoy the same right of access to contesting the norms that govern them, in reality, entitlement to 'agency' on behalf of the governed is conditioned by politico-legal as well as socio-cultural context variables. The cycle model demonstrates which conditions matter for a given norm conflict and how they affect access to either reactive or proactive contestation.

The model is therefore a means to operationalise research to examine the potential for stakeholder access to contestation. This is facilitated by the three-by-three table and normative overlay in the shape of a spinning arrow. Together the nine ideal typical locales and the indicator represent the bifocal approach's commitment to examine the 'is/ought' dimension of norms as interrelated. The model allows a focus on the sites where norm validation is practiced, accounting for stages of norm implementation and scales of governance.

Against this background, it becomes possible to reconstruct the conditions of access to contestation. As a reactive practice, contestation is an objection to norms. In contrast, when conceptualised as a proactive practice, contestation is undertaken to engage with norms. The latter normative position is based on the putative definition of the legitimacy of a given normative order as depending on whether or not those governed by this order have access to contest norms of governance. The higher the potential for engagement with norms, the more legitimate becomes the order of which they are part. To facilitate this engagement, channels of norm validation are required that are accessible to stakeholders but as research has indicated, access to validation practices is not equally distributed among stakeholders. This is due to formal constraints that are given by the context of international relations which, in turn, is governed by international law and a set of political institutions to facilitate its proper implementation. However, the social environment in which norms are interpreted plays a crucial role.

The declining taken-for-grantedness of fundamental norms demonstrates that, while the universality claim of fundamental principles holds true for most democratic states, their effect remains to be realised by additional measures because of the lack of normative fit in international encounters. They require novel means for mediation reflecting challenges brought to light by normativity and normative meaning in crisis. The means may involve institutional pathways or patterns of knowledge devised through empirical research that charts normative meaning onto normative grids. Once pathways are established, reactive contestation (indicating cultural diversity conflicts) is complemented by proactive contestation (indicating institutional pathways of access for diverse stakeholders). As both perspectives on norms are brought to bear, the potentially destructive effect of normative turbulence is kept in check while highlighting the constructive effect of 'conflict'. Understanding the distinct practices of contestation matters for norms research to identify how both reactive and proactive practices of contestation play out in the process of re-enacting the global normative structure of meaning in use.

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Notes

1. Acharya, "Global International Relations"; Acharya, "Advancing Global IR"; Hurrell, "Beyond Critique"; and Zwingel, "How Do Norms Travel?"
2. Compare Draude's introduction to this collection; see also Acharya, "How Ideas Spread"; Zwingel, "How Do Norms Travel?"; and Zimmermann, "Same Same or Different?"
3. Frost, "A Turn Not Taken"; Price, *Moral Limit and Possibility*; Havercroft, "Sovereignty, Recognition and Indigenous peoples"; Robinson, "Bridging the Real and the Ideal"; Robinson et al., *Routledge Handbook on Ethics*; and Havercroft, "Introduction."
4. Havercroft, "Introduction"; Katzenstein, *The Culture of National Security*; critically: Wiener, "Dual Quality of Norms."
5. Wiener, *A Theory of Contestation*, 1; Tully, "The Unfreedom of the Moderns"; Wiener, "Theory of Contestation – Concise Summary"; and Wiener, "Reply to My Critics."
6. Tully, "Middle East Legal and Governmental Pluralism."
7. Wiener, *A Theory of Contestation*; Acharya, "Global International Relations"; Acharya, "Advancing Global IR"; Zwingel, "How Do Norms Travel?"; and Hurrell "Beyond Critique."
8. Wiener, *Invisible Constitution of Politics*, 6.
9. Owen and Tully, "Redistribution and Recognition"; Laden and Owen, *Multiculturalism and Political Theory*; and Ackerly et al., "Grounded Normative Theory."
10. Wiener, *Invisible Constitution of Politics*, 66.
11. UN General Assembly, A/66/749, 16 March 2012: *Delivering justice: programme of action to strengthen the rule of law at the national and international levels* <https://www.un.org/ruleoflaw/blog/document/delivering-justice-programme-of-action-to-strengthen-the-rule-of-law-at-the-national-and-international-levels-report-of-the-secretary-general-a66749/>.
12. Park and Vetterlein, *Owning Development*.
13. Kratochwil and Ruggie, "International Organization."
14. Brunnée and Toope, *Legitimacy and Legality*.
15. Wiener, "Dual Quality of Norms."
16. Tully, "Recognition and Dialogue," 86.
17. Bueger, "Pathways to Practice"; Bueger and Gadinger, "The Play of International Practice"; and Hofius, "Community at the Border."
18. Bueger, "Pathways to Practice"; Hofius, "Community at the Border"; and Hofius et al., "Den Schleier Lichten?"
19. Walker, "Beyond Boundary Disputes"; and Hofius, "Community at the Border."
20. Hofius, "Community at the Border."
21. Kratochwil, "The Force of Prescription."
22. Forst and Lechner, "Two Conceptions of International Practice."
23. Niemann and Schillinger, "Contestation 'All the Way Down?'"
24. Havercroft, "Introduction."

25. Wolff and Zimmermann, "Between Banyans and Battle Scenes"; Niemann and Schillinger, "Contestation 'All the Way Down?'; and Havercroft, "Introduction."
26. Price, *Moral Limit and Possibility*; Robinson, "Bridging the Real and the Ideal"; and Havercroft, "Introduction."
27. Frost, "A Turn Not Taken."
28. Finnemore and Toope, "Alternatives to 'Legalization'."
29. Liese, "Exceptional Necessity"; and Price and Sikkink, "From Micro to Neuro."
30. Niesen, "'Mixed' Constituent Legitimacy."
31. For the former see: Owen and Tully, "Redistribution and Recognition"; for the latter see Lindemann and Ringmar, *International Politics of Recognition*; and Honneth, "Recognition between States."
32. Note that this approach to struggles over recognition differs from what is widely referred to as 'recognition theory' (Honneth, *The Struggle for Recognition*; Honneth, "The Point of Recognition"; Honneth, "Rejoinder"; and Fraser, "Distorted Beyond All Recognition.") which focuses on the sphere of recognition in relation with the state and is developed with reference to theories of ethics or justice (Rawls, *A Theory of Justice*; Taylor, "To Follow a Rule ..."). Notably, what is widely referred to as 'recognition theory' usually focuses on 'a sphere of ethical life and social freedom formed in the processes of recognition between individuals and groups across, over, and beyond, the state' (Brincat, "Cosmopolitan Recognition: Three Vignettes," 1.). Building on its predominant focus on the role of the state as a facilitator of recognition and/or distribution, IR scholars have applied it to study inter-state relations (see e.g. Lindemann and Ringmar, *International Politics of Recognition*).
33. The ongoing challenge for all diversity-minded approaches lies in the choice of principles and procedures to accommodate the particular validity claims of diverse stakeholders vis-à-vis universal validity claims of a norm (Coulthard, "Culture, Consent, and the State.").
34. Searle, *Construction of Social Reality*.
35. Laden and Owen, *Multiculturalism and Political Theory*, 19 (emphasis in original text).
36. Searle, *Speech Acts*, 35; cf. Frost and Lechner, "Two Conceptions of International Practice," 345.
37. Krook and True, "Rethinking Life Cycles of International Norms," 103ff; cf. Wiener, "Enacting Meaning-in-use," 183ff.
38. Müller, "Conclusion: Agency is Central," 5; Park and Vetterlein, *Owning Development*; and Sandholtz and Stiles, *International Norms and Cycles of Change*, 17; cf. Müller, "Conclusion: Agency is Central."
39. Wiener, *A Theory of Contestation*, 7.
40. See note 37 above, 21.
41. March and Olsen, *Rediscovering Institutions*.
42. See note 37 above, 9.
43. Tully, "The Unfreedom of the Moderns."
44. Adler-Nissen and Pouliot, "Power in Practice: Negotiating the International Intervention in Libya"; Kornprobst and Senn, "Introduction: Background Ideas in International Relations"; and McCourt, "Practice Theory and Relationalism."
45. For summarizing this research question, I am thankful to Stephen Toope, Munk School of Global Affairs, University of Toronto, Seminar on the cycle model on March 26, 2017. For critical discussion of the model I am thankful to all participants of that seminar especially Emanuel Adler, Jutta Brunnee, Randall Hansen, Ron Levi, Stephen Bernstein and Marion Laurence.
46. Wiener, "Contested Norms in Inter-national Encounters"; Wiener, "Reply to My Critics"; and Wallaschek, "Solidarity in the Making."
47. For the criminal indictment of former US Secretary of Defence Donald Rumsfeld and others, which was filed on 30 November 2004 with the German Federal Court (German: *Bundesgerichtshof*) in Karlsruhe, see: https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Germany/Rumsfeld_CriminalIndictment_29-11-2004.pdf.
48. For the first of a series of judgments in this case, see: Judgment of the Court (Grand Chamber) of 3 September 2008 – Yassin Abdullah Kadi, Al Barakaat International Foundation v Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland (Joined Cases C-402/05 P and C-415/05 P);

OJ EU 11.8.2008, C/285 2ff, see: [https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri = uriserv%3AOJ.C_.2008.285.01.0002.01.ENG](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2008.285.01.0002.01.ENG).

49. Liese, "Exceptional Necessity."
50. This was the US NGO: Center for Constitutional Rights, represented by the President, Michael Ratner, Lawyer and the Vice President, Peter Weiss, Lawyer, 666 Broadway, New York, NY 10012, USA. And these are the names of the Iraqi citizens: Ahmed Hassan Mahawis Derweesh, Faisal Abdulla Abdullatif Ahmed Salih Nouh Ahmed Shehab (compare: https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Germany/Rumsfeld_CriminalIndictment_29-11-2004.pdf, 2).
51. Fischer-Lescano, "Torture in Abu Ghraib."
52. Kaleck, "From Pinochet to Rumsfeld."

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