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Tackling invisible frontiers of global justice: an extension of Sen's 'Comparison View of Justice' into IR

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A central challenge of Amartya Sen's *comparative* view of justice is to bring cultural diversity to bear on conceptualizing global justice, which includes building bridges across cultures that enable effective action, and rendering compatible the most beneficent of Rawlsian (or *transcendental*) intentions with irreducible cultural diversity. For social scientists meeting this challenge requires, first, *taking account of variation* of social practices in the social construction of meaning, and second, *uncovering invisible frontiers* of global justice that remain hidden due to conceptual or empirical oversight. The latter is especially true for contemporary International Relations (IR) theory, which assumes state actors to be the main interlocutors in the global realm, and thus precludes consideration of micro-level forms of inter-national relations (understood as interaction among all types of actors that takes place across country borders and that bears traits of national identity). Alternatively, Sen's micro-perspectival approach offers a welcome support for pluralist approaches that both appreciate non-state access to contestation in the international arena, and account for the meaning-in-use of fundamental norms (democracy, rule of law, human rights) in different cultural and inter-national contexts.

Keywords: justice; community; international relations theory; fundamental norms; meaning-in-use

Introduction

The recent 'New Frontiers in Global Justice' project hosted by the University of California – San Diego asked panel participants to engage Amartya Sen's *comparative* view of justice in contrast with the concept of *transcendental institutionalism* which Sen associates with John Rawls. The leading question focused on the extent to which Sen's comparative approach takes local and historical knowledge seriously. Participants were especially asked

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to consider how to build bridges across cultures that enable effective action, and how to render compatible the most noble and beneficent of Rawlsian intentions with deep, irreducible cultural diversity.

In taking on this task, this paper advances a pluralist perspective, arguing that bringing cultural diversity to bear on the project of conceptualizing global justice requires social scientists to address two challenges. The first is *taking account of variation* of social practices as a key factor in the process of the social construction of meaning (Garfinkel 1967); the second, related challenge consists in *uncovering invisible frontiers* of global justice that remain hidden due to conceptual or empirical oversight (Tully 1995, Wiener 2008, 2009). I suggest approaching the challenges posed by variation and invisibility to the 'new frontiers of justice project' by turning to a 'bifocal form of critical analysis' (Tully 2000, p. 471). This type of analysis offers ways of studying the interrelation between normative concerns, on the one hand, *and* real-world situations about justice, on the other. Accordingly, normative concerns and real-world situations are studied as interrelated rather than hierarchically ordered. A bifocal approach operates according to the reflexive method which involves two moves, one empirical and the other normative. With a view to scrutinizing the constitutional order of democratic societies, it first makes 'invisible yet constitutive elements of politics accountable based on empirical research, and, secondly, it discusses the inclusion of these elements in approaches to democratic constitutionalism' (Wiener 2008, p. 15).

To demonstrate how this approach may fruitfully contribute to the project of identifying new frontiers of global justice, this paper proceeds in four further sections. The next section sets out the context for the paper's argument of tackling invisible frontiers of global justice. To that end it draws on Sen's critique of Rawls's 'original position' and links it with the 'liberal community problem' in International Relations (IR) theory. The following section develops an argument about access to contestation in relation to fundamental norms of justice. The next section then offers an example that suggests how the micro-comparative approach might be applied in an empirical research design that draws on ethno-methodology and critical discourse analysis. In detail, this section explains how an empirical reconstruction of normative structures of meaning-in-use which have been produced through everyday practices 'on the ground' potentially provides an empirical access point that allows us to identify invisible frontiers of justice. Finally, the last section draws on the findings of the ethno-methodological enquiry into locally developed knowledge and background experience and describes how these matter for an alternative view on global justice.

The 'original position' and the 'community problem' in International Relations (IR) theory

Sen takes issue with Rawls's conceptual extension of the 'original position' from the context of a domestic polity that is based on the rules of social contract towards one of global justice that rests on a society of peoples. He considers this approach to be prone to 'exclusionary neglect' as 'the interests and perspectives of those who are not parties to the social contract of a polity but who bear some of the consequences of the decisions taken in that particular polity' are conceptually neglected (Sen 2009, p. 140). In other words, the problem of *access to contestation* is not sufficiently addressed by Rawls's enhanced theory of justice. The problem has been addressed by a range of more recent contributions to normative Political Theory as well as more recently, International Political Theory (IPT). These approaches offer a range of suggestions to counter this neglect, most notably the concepts of the right to 'mutual recognition' (Tully 1995), 'inclusion of the other' (Habermas 1998), and the 'right to justification' (Forst 2007). As I will argue, the empirical angle of a comparative micro-perspective on new frontiers of global justice offers a conceptual link with relational theories of citizenship that operate with three dimensions of citizenship – rights, belonging and access (such as, for example, Marshall 1950). Such theories differ from the two-tiered individual liberal approach to citizenship rights that focuses on rights and belonging (cf. Brubaker 1989, Habermas 1991, Lehning 1998) by emphasizing the aspect of 'access' as the historical element of citizenship which is a *sine qua non* category for enjoying full citizenship rights. This reveals a third challenge for the global justice project: namely, to address conceptually the access condition to citizenship in contexts beyond the state.

As Sen rightly points out:

Rawls's way of addressing the problem involves invoking another 'original position', this time involving representatives of different 'peoples'. With some oversimplification – not central to the present context – the two 'original positions' can be seen as being respectively *intranational* (between individuals in a nation) and *international* (between representatives of different nations). Each exercise is one of closed impartiality, but the two cover the entire world population. [...] However, the idea of one global exercise of social contract for the entire world population would appear to be deeply unrealistic – now or in the foreseeable future. Certainly, there is an institutional lacuna here (Sen 2009, pp. 140–141, original emphases)

In considering the project of identifying new frontiers of justice, which I would hold remain hidden unless uncovered by research specifically geared towards targeting them, it is significant that Rawls's concept of the 'Law of Peoples' binding a 'Society of Peoples' transports such frontiers between distinct and specifically structured units. These units are the

'domestic societies', which are distinguished as five types according to their respective 'liberal' or 'decent' internal structures of order (cf. Rawls 1999, ch. 1). In short, Rawls extends his approach to 'justice as fairness' towards a situation of what might be called inter-'people' justice. This situation needs to be differentiated from Sen's understanding of *global* justice. In this respect, we must first keep in mind that for Rawls international justice builds on the assumption that the original position is a valid concept for establishing justice for members of a liberal community that overlaps with the domestic context/national state. This is a highly contested position to take, when considering the limitations of the original position, i.e. exclusionary neglect, inclusionary incoherence and procedural parochialism (Sen 2009, pp. 138–139).

This Rawlsian position is highly consistent with the assumption, widely held by liberal IR theorists, that the liberal community lies at the core of the global map. Indeed, contemporary liberal IR theory ranging from neoliberal institutionalists and regime theorists of the 1980s (Krasner 1983, Keohane 1986) to the modern constructivists of the 1990s (Katzenstein *et al.* 1998) builds on the idealist strand of early US American and British IR scholars (Carr 1939, Morgenthau 1948, Bull 1977). The issue I take with the liberal IR literature is the relative absence of problematization of the impact, and hence the overlooking of oft unintended consequences, of the inherent liberal community assumption in global politics.¹ Sen pins the problem down when noting that:

even in the politically divisive world in which we live, we have to give fuller recognition to the fact that different persons across borders need not operate only through international (or 'inter-people') relations. The world is certainly divisive, but it is diversely divisive, and the partitioning of the global population into distinct 'nations' or 'peoples' is not the only line of division (Sen 2009, p. 141)

I suggest that to comprehend the impact and potential of this diversity for global justice, we need to take a micro-perspectival approach and study individual interaction.

To summarize, then, the 'liberal community problem' in IR theory: IR scholars of the liberal tradition make the inexplicit assumption that an 'original position' of the Rawlsian kind is twice enacted and accepted by all states (or, for lawyers, nations) as the main interlocutors in the global realm (Sen 2009, p. 141). We can call this the 'invisible constitution' of liberal IR theory. It works with an assumption that has never been proven empirically. Nonetheless, the entire theoretical construct rests on the assumption that a community of 'civilized nations' (cf. Article 38 c, International Court of Justice) exists as the centre of the global realm. It is from here that all assumptions about civilized interaction according to fundamen-

tal norms of liberal theory such as human rights, democracy and so on unfold. Accordingly, state action is judged in the international community with reference to these norms, and states are subsequently categorized into 'liberal states', 'rogue states' and 'failed states'. Subsequently, political strategies and legal advice in IR are guided by the logic of appropriateness that derives from the (Western) liberal model, and hence seek to counter such deviations and establish the liberal ideal of politics.² In agreement with Sen's expression of 'scepticism about Rawls's highly specific claim about the unique choice, in the original position, of one particular set of principles for just institutions, needed for a fully just society' (Sen 2009, pp. 56–57), the following section will zoom in on diversity. Based on a micro-perspectival approach that compares different social groups in Europe, it confirms the impact of experience on the way individuals interpret fundamental norms. There are then, indeed 'genuinely plural, sometimes conflicting, general concerns that bear on our understanding of justice' (Sen 2009, p. 57).

Access to contestation

In *The Idea of Justice* (Sen 2009) Sen continues to flesh out his approach to a 'comparative view of justice' in contradistinction to Rawls's transcendental institutionalist approach to justice (Rawls 1971, 2001). In his own words, '[I]n contrast with most modern theories of justice, which concentrate on the "just society", this book is an attempt to investigate realization-based comparisons that focus on the advancement or retreat of justice' (Sen 2009, p. 8). The starting point for Sen is therefore a choice between two major questions: first, 'what would be perfectly just institutions?'; and second, 'how would justice be advanced?' (Sen 2009, p. 9) Rawls's *Theory of Justice* stresses the importance of institutions with his focus on 'the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation'. And he notes, '[B]y major institutions I understand the political constitution and the principal economic and social arrangements' (Rawls 1971, p. 7). In contradistinction to Rawls, Sen suggests a shift of perspective which is to produce the 'dual effect, first, of taking a comparative rather than a transcendental route, and second, of focusing on actual realizations in the societies involved, rather than only institutions and rules' (Sen 2009, p. 9).

By suggesting a comparative route and a focus on actual realizations, Sen's work may be most fruitfully understood as offering an alternative framework to both the political liberalism of Rawls and the Kantian republicanism that underlies Habermas's particular discursive approach to justice. The argument that follows begins with the basic task of juxtaposing transcendental institutional or discursive approaches, on the one hand, with a

relational comparative perspective, on the other, and this to demonstrate how Sen's comparative approach to justice, and the quite pronounced distinction of this view from Rawls's institutional approach, matter for rethinking theories of justice that attempt to address 'global frontiers of justice'. I argue that this shift of perspective is crucial insofar as it opens a theoretical perspective that allows for peering beyond liberal theories of justice which have evolved from and come to dominate Western political thought. This paper argues that from a pluralist perspective, the key point of this comparative perspective is the underlying assumption that all perspectives on justice are cast from a shared, albeit differentiated, 'inside' position. This theoretical move avoids the inside/outside tension that is inherent in neo-Kantian and liberal community approaches which are based on the assumption of a relatively stable community, and the subsequent call for the 'inclusion of the other' such approaches entail (Habermas *et al.* 1998; cf. critically Linklater 1998).

Even though Habermas specifically notes that 'inclusion does not imply locking members into a community that closes itself off from others', and then clarifies that to him 'the "inclusion of the other" means rather that the boundaries of the community are open for all, also and most especially for those who are strangers to one another and want to remain strangers' (Habermas 1998, p. xxxvi), focusing on the community as the precondition for justice renders the inside/outside perspective as a stable aspect of any emerging global structure or order (cf. Walker 1993). Subsequently, liberal approaches cannot avoid conceptualizing the other as 'strangers', and the maximum amount of freedom bestowed on 'strangers' is the right to remain strangers within a society of insiders. The opposite of being a stranger, therefore, would involve becoming an insider. The question that remains is how this shift of position within a given community from stranger to insider becomes possible without having to resort to become precisely like the insiders? It seems that the only way of obtaining access to the same rights as the rights held by insiders, is to trade in the *freedom to differ*. This would resemble a process of trading-off the right to differ for the right to equality. The resulting change of status is in principle quite comparable to that between access to social rights which is obtained by trading in restricted political rights which Marshall noted in his seminal study on citizenship in Britain (Marshall 1950).

In sum, the stability of the liberal community as the structural underpinning of politics leaves liberal approaches with two major shortcomings. First, they lack the conceptual tools to unpack the structures underlying emerging or changing orders; second, they fail to problematize the inside/outside perspective. Both make the process of uncovering invisible frontiers of global justice harder.

A critical perspective, in turn, would hold that achieving justice depends on equal access to participation in contesting the norms of gover-

nance. According to this approach, the central problem is ‘incorporating access to contestation’ for all rather than including the other (Wiener 2008, ch. 9); and given analytical attention to inclusive plurality it follows that justice remains conditioned by societally, culturally and politically differentiated positions (Tully 1995). By placing all positions within the same – global – context Sen’s micro-perspectival comparative approach offers a welcome support for pluralist approaches that seek to tackle the implicit problem of the lacking interchangeability of the ‘we’ (the insiders) and the ‘other’ (the outsider) in thinking about justice. The comparative approach to global justice thus allows for a fresh view on new (read: heretofore invisible) frontiers of justice based on the variety of positions and their respective perception of justice based on specific individual experiences.

In the following an example for a ‘bifocal’ form of critical analysis on the subject of new global frontiers of justice is developed with reference to the ‘liberal community assumption’ in IR theory. The assumption entails an implicit and hence uncritical reference to the concept of ‘liberal community’ as a stable factor in international (read: inter-state) politics which sustains much modern IR writing. The critical enquiry into the way the ‘liberal community assumption’ plays out helps identify the innovative potential of Sen’s micro-comparative approach, insofar as it shares the core reference of the community as the context in which social and/or political relations are ordered according to a specific set of principles, norms and rules as the foundation of justice. I argue that, akin to Rawls’s basic assumption of the ‘original position’ as a necessary condition for his particular theory of justice (Rawls 1971), modern IR scholars work with the assumption that a liberal community of nations/states underlies the politics of IR. However, as this paper will substantiate, this underlying assumption is largely implicit and therefore remains notably under-theorized. Comparative research on norms in inter-national relations demonstrates how such an unproblematic view of assumptions about a liberal community undermines the approach to global justice.

Another formative discourse of IR, particularly as global territory, was charted in the 20th century, is that of nation-state building (Anderson 1983, (Rojas de Ferro 1995). Indeed, this modern language of the nation-state is the language of the United Nations Charter, and is well reflected by international lawyers’ reference to *ius gentium*³ which applies ‘inter-national’ to mean ‘inter-state’.⁴ Similarly, neo-realist and liberal IR theories define IR as relations between liberal states (or their representatives), and both define ‘international’ from an *actor-based* perspective (Why do states act in the way they do?).

As a critical response to this language, here I define ‘inter-national’ relations as interaction among (all types of) actors that takes place across country borders and that bears traits of national identity. The definition I

propose is *activity-based* (How is it possible that a situation did emerge?), and in this sense interaction may involve an entire range of actors from individuals to states. Notably, this definition explicitly takes account of the real impact of formative nation-state discourse, and it is inter-national in that it recognizes that the constraints of the modern nation-state, including the existence of borders between nation-states, impose particular assumptions about freedom, rights and legitimacy.

While there is a sense that Henkin's erstwhile observation about state behaviour vis-à-vis international law still holds, namely that 'almost all states comply with almost all principles of international law and almost all their obligations almost all of the time' (cf. Henkin 1979, p. 47, Koh 1997, p. 2599), 21st-century IR is confronted with a paradox, nonetheless. That is, on the one hand, international actors have increased in number and variety, and operate in a context where increased institutionalization, constitutionalization and legalization suggest a shift from globalized towards constitutionalized IR. This shift is empirically supported by a new layer of 'thick' constitutional quality in the global realm (Abbott *et al.* 2000, Slaughter 2004, Zürn *et al.* 2007). This enhanced constitutional quality would indeed sustain the claim that Henkin's observation stands, 30 years on. Yet, subsequent empirical studies of rule in particular cases, and of norm interpretation in different contexts, suggest that the principles and obligations of international law are more often confronted with 'contested compliance' (Wiener 2004). Importantly, contestation usually takes place *despite* strong interest in demonstrating compliance with expectations of legitimacy, i.e. perceptions that state or government representatives act according to fundamental norms of justice (Klabbers 2006, Brunnée and Toope 2008).

Recent examples of such situations of contested compliance are especially noticeable in the environment of the United Nations Security Council (UN SC) resolutions with regard to implementing measures to protect international security and to prevent international terrorist activity. Here, the recent decision of the European Court of Justice (ECJ) in *Kadi and Al Barakaat* (hereafter: the *Kadi case*)⁵ has highlighted most clearly (with reference to diverging interpretations of fundamental norms of international law) how diverging legitimacy claims are possible despite the intention to comply with fundamental norms by the involved international actors. Thus, in the specific proceedings and discussions of the case, the ECJ held that in situations where international law does not provide for the implementation of fundamental rights protection of individuals by facilitating access to property, judicial review and fair procedure, the implementation of international law in the European Union's member states needs revising (e.g. to the effect that a Council Regulation regulating the implementation of the UN SC decision about smart sanctions vis-à-vis Mr Kadi that entailed the freezing of his funds and assets and the restriction of his ability to move freely⁶ was annulled). In turn, others – especially inter-

national lawyers – argued that with this decision, the ECJ undermined the reach and hence the rules of international law, by effectively endorsing the European Union's non-compliance with Article 103 of the United Nations Charter⁷ (see most prominently De Búrca, 2010). In turn, and in a brilliant rebuttal of this argument, Turkuler Isiksel has argued that the ECJ's action is best understood as an 'act of civil disobedience' undertaken in order to protect fundamental rights of individuals (Isiksel 2010, p. 553) – an act, she maintains, which leads to the consolidation of the European Union's own constitutional integration. By doing so she brought the point home to discussions of justice in the context of democratic constitutionalism.

Without wishing to dwell on the debate about the *Kadi case*, we can summarize that the activities of contested compliance ensuing in the aftermath of the UN SC's decision to implement 'smart sanctions' in order to protect humankind from the threat of terrorism⁸ demonstrated different interpretations of compliance with the fundamental individual rights norm. What matters for the argument about 'new' frontiers of global justice developed in this paper is whether enhanced contestation of fundamental norms of international law indicates a general situation in which compliance with international law is under threat (as the international lawyers suggest), or whether enhanced contestation suggests that the prospects of implementing fundamental rights in IR are improved through expanding the range of actors with access to the process of contesting a fundamental norm (as critical analysis would hold). Both outcomes are possible, and considering them requires much more detailed studies of the noticed shift from globalized to constitutionalized IR.

For now, it suffices to note that this shift brings questions of justice, legitimacy and democracy to the forefront of IR theory, traditionally a sub-discipline in Political Science focused on studying the balance of power within an anarchical society driven by material facts such as power relations, military power, economic capabilities and natural resources, as well as by social facts such as moral leadership, norm-setting and special relationships (Bull 1977, Waltz 1979, Ruggie 1998, Wendt 1999). The latter focus on 'soft' issues confronts IR theorists with 'normativity', a dimension of analysis that has traditionally been the domain of international lawyers.⁹ In sum, I argue that to unpack this paradox of constitutional quality versus contested compliance we need to understand how individual interpretations of justice have changed during the shift from merely 'globalized' towards 'constitutionalized' IR (Albert 2007, Cohen 2008, Dunoff and Trachtman 2009, Wiener and Oeter 2012). To that end, a comparative micro-perspectival study of individual international interaction is particularly helpful. The following section turns to the method of critical empirical enquiry to demonstrate how such an approach might work with a view to replacing the concept of 'international justice' with 'global justice' (cf. Sen 2009, pp. 140ff.).

Enacting normative meaning-in-use

In the *Invisible Constitution of Politics* (Wiener 2008), I sought to address the community problem, in a fashion that is quite similar to Sen's critical take on Rawls's institutional focus. The book also stresses contextual awareness assessed by problem-focused empirical studies, rather than seeking to optimize institutional design based on philosophical considerations. To that end I proposed taking a micro-perspectival approach to study how individuals interact inter-nationally.

This research generated two results. First, different from Karl Deutsch's and many other European integration scholars' predictions, enhanced interaction in the process of regional integration in Europe did not lead to 'harmonization' (cf. Deutsch 1953) or, in fact, a wide-ranging change towards 'Europeanization' (e.g. Checkel 2001, and many others, Cowles *et al.* 2001). We can therefore not assume that fundamental norms are met with shared social recognition across the European Union. Instead, the degree of appropriateness associated with norms varies according to individual interaction in context. When prompted in systematically conducted semi-structured interviews that triggered 'expressive utterances', four groups of Europeans (Germans in Berlin, British in London, Germans in Brussels, British in Brussels) of two different nationalities (British and German) that were operating in three different locations (London, Berlin and Brussels) revealed three different normative structures bearing a distinct indexicality¹⁰ of 'associative connotations' with leading fundamental norms of justice such as democracy, the rule of law, citizenship, human and fundamental rights. These sets of connotations shed light on the hidden indexicality of different normative structures of meaning-in-use that are enacted through and constituted by individual interaction. Notably, the originally distinct *four* social groups turned out to generate only *three* such normative structures.¹¹

Second, I noted that following iterated inter-national interaction the contours of a space emerged which I define as 'transnational arenas' (Wiener 2008, ch. 8). In these arenas the interviewed individuals demonstrated associated connotations with fundamental norms that were *common among a mixed nationality group* and *distinct from two groups of common nationality*. These findings were generated by discourse analysis that sought to establish the meaning of liberal fundamental norms such as 'democracy', 'the rule of law', 'human rights' and so forth by bringing their 'indexicality' (Garfinkel 1967) to the fore based on comparative case studies. That is, to make heretofore invisible meanings discernible, the reconstruction of meaning was conducted with reference to everyday cultural practices as opposed to reading the meaning of the regulatory practices of a liberal community's institutions. Both findings matter for the comparative route towards justice because they suggest that traditional indicators of shared

interpretations of norms are not reliable when tested empirically: Neither the philosophical assumptions (original position, liberal community) nor social science indicators (harmonization, national identity) would have predicted these findings.

The detailed evaluation of this case study shows that individuals refer to different normative structures of meaning-in-use in their day-to-day interactions. These structures of meaning in use evolve through experience, they bear 'background experience' (Wenger 1998) and are constitutive for future expectations that are held individually and enacted in social encounters. They matter particularly in inter-national encounters where different normative structures of meaning-in-use are engaged in a communication. Differences bear the traits of dominant 'binary oppositions' that are shared by social groups (Milliken 1999). They thus generate social recognition based on shared experience within different arenas of interaction, e.g. the more familiar 'national' arenas or the increasingly emerging new type of transnational arena. From this finding of difference with regard to the normative structure of meaning-in-use it is possible to derive the following working *hypothesis*: The more individual interaction takes place within a stable social context over a given period of time (say about five years), the smaller are differences with regard to the interpretation of fundamental norms, values, and principles, and the higher is the degree of social recognition.

Crucially, this finding suggests that in the absence of a community with fixed membership and where the social structures and political institutions overlap within a single constitutionally qualified territory akin to that of twentieth century European nation-states (Anderson 1983), social recognition must be measured from the bottom-up, i.e. following from individual interaction. It cannot be taken as a given, as the liberal community assumption in IR would suggest. The emphasis on the input of individual interaction sustains Sen's capability approach to global justice by offering an empirical approach to take into account the plurality of locally enacted social, cultural and political conditions of justice. For analytical reasons of distinction, I have termed this bottom-up procedure 'cultural validation' in distinction from social recognition. In the absence of iterated individual interaction in a stable context, the interpretation of norms, values and principles must therefore be taken as individually distinct – and therefore potentially conflictive. To capture this distinct perspective on fundamental norms, I suggested elsewhere to break normative meanings down into three activity based dimensions of norms which can be studied separately: formal validation (that which is written down), social recognition (that which is shared by a social group) and cultural validation (that which is experienced individually).

Local knowledge and a comparison view of justice

In order to probe Sen's critique of Rawls's transcendental institutionalist approach to justice and sustain a more micro-oriented empirical approach to contesting the claims of justice through everyday practices, this paper questioned the liberal community assumption of IR theory. It was argued that this assumption demonstrates the effect of inbuilt stable structural inequalities of liberal entities that are conceptualized as part of the society of peoples quite well. Given that this approach tends to blur diversity patterns that fall 'in between' a political map of the world, this paper proposed studying *interaction* as constitutive for the distinct quality of specific arenas. These arenas are distinguished according to shared normative structures of meaning in use, which have been derived through cultural practice (not merely regulatory practice). They are expected to emerge whenever iterated inter-national (read: individuals of different 'national' cultural background) relations take place over an extended period of time, and result in the blurring of the erstwhile clearly visible national boundaries (read: cultural habits and interpretations of meaning).

It follows that if we are interested in comprehending how IR as relations between diverse actors shape, constrain and/or enable global justice, we need to examine and compare the interplay of international interaction as multiple processes that evolve in relation with, but are not determined by, political processes and constitutional rules. For analytical purposes the distinct quality of these arenas can be generally distinguished as 'international' (where actors of different national/cultural roots interact), 'domestic' (where actors with shared national roots interact) or 'transnational' (where national distinction does not make a difference) (Wiener 2008, esp. chs 8–9). Given its relatively stable social identity basis and active participatory structure, a transnational arena comes closest to a context where equal citizenship standards of rights, access and belonging are possible (Marshall 1950). The proposition is therefore to replace the liberal assumption of 'membership in a community' that constitutes the condition for the Rawlsian original position with access to a transnational arena. In a world where global justice must reflect the conditions of globalized and constitutionalized IR, this access would be conditioned by the possibility of mobility, communication and so forth. It is here where a 'comparison view of justice' matters especially.

The consequence with regard to international institution-building, for example when considering the future development of the United Nations institutional setting (Cohen 2010), would be creating access to participation in international interaction and considering the importance of informal institution-building processes that have been constituted 'on the ground'. Work on 'glocalized' citizenship activities (Tully 2008) based on decisions to work with an informal institutional design, such as with the European

Union's Eurogroup (Puetter 2006, 2007), are good examples for such processes.

In conclusion, this section suggests that studying everyday cultural practices, as opposed to given institutional parameters, enables social science to understand and appreciate the role of new frontiers of global justice, such as for example those that emerge between arenas that differ according to their respective socially constructed normative meaning-in-use.

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Notes

1. While critical theorists such as Linklater approach the issue from a different theoretical position and ask 'how is community possible?' (Linklater 1998, 2007), this approach does equally neglect the specific multidimensional international relations that make a comparative approach to justice such an important contribution. In turn, practice-based IR scholars focus on 'communities of practice' that emerge through 'doing' politics in specific policy sectors, such as, for example, foreign policy (Adler 2008, Pouliot 2010; for a review of the use of the 'community concept' in IR, see Wiener and Vetterlein (2011).
2. The Arab Spring revolutions and the ensuing discussions about how a change of political institutions is to be arranged demonstrate quite nicely that interpretations about the fundamental norms of governance differ quite substantially pending on variation of contextual conditions.
3. Translated as 'Law of Nations'.
4. This distinctive reference is quite important for cross-disciplinary reference, as political scientists would not necessarily agree with the statement that constitutionalism is 'postnational' (cf. Shaw 1999, Krisch 2010), while they would readily agree with post-statal or 'beyond the state' constitutionalism.
5. ECJ, Cases C-402/05P and C-415/05P, 3 September 2008.
6. See Council Regulation 881/20024, which had imposed restrictive measures against persons and entities associated with Osama bin Laden, the Al-Qaeda network and the Taliban.
7. Art. 3 of the UN Charter stipulates that '[I]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.' Available from: <http://www.un.org/en/documents/charter/chapter16.shtml> (accessed on 7 September 2011).
8. Cf. UN SC Resolution S/RES/1333(2000), which decides among other things 'to freeze without delay funds and other assets of Osama Bin Laden and individuals and entities associated with him'. For details, see <http://www.state.gov/documents/organization/5265.pdf> (accessed on 7 September 2011).

9. Cf. for many: De Búrca, 2010, Brunnée and Toope (2010), and Kumm (2011); see, however, contributions by normative IR theorists such as Frost (1986), Cochran (1999) and Brown (2002); and calls for IR to turn to normative aspects of world society such as that by Barnett and Sikkink (2008).
10. Indexicality has been introduced by Harold Garfinkel as a concept to describe the way daily practices are habitual yet invisible to those not involved in this daily routine, as Eryn Grant summarizes quite succinctly (Garfinkel 1967; see also Grant 2009 at <http://eryngrant.blogspot.com/2009/07/artful-practices-of-interaction.html>, accessed on 20 October 2011).
11. Europeanists would have expected for these groups to generate a single normative structure, given their highest position on Deutsch's social layer-cake, i. e. as journalists, academics, judges, politicians, civil servants, NGO leaders, and so on. The 55 interviewees of this case study have been selected according to their respective conditions of access to and possibility of making use of public discourse. All interviewees have reported having frequent international contacts over the telephone and/or through travelling and all had been in their respective position/place for about five years at least (for details of the case study, see Wiener 2008, chs 4–7).

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