# A Reply to My Critics

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First of all, thanks are due to Jonathan Havercroft for extending the invitation to discuss *A Theory of Contestation* at the "Author Meets Critics" panel at the American Political Science Association meeting in San Francisco in 2015, and for subsequently putting together this symposium. Needless to say, I am also incredibly thankful and humbled by the serious engagement and the exceedingly insightful and thought-provoking comments offered by the symposium's other contributors. All critics engage with *gusto* in contestation themselves, a practice, Sasikumar Sundaram astutely notes, that is a *sine qua non* for legitimately advancing and probing academic progress. If this sensitizing effect holds for a wider readership, my small book's goal of engaging interdisciplinary scholarship towards developing a concise research program on norm contestation is more than met. I had conceived of *A Theory of Contestation* as a think piece during a writing retreat in order to step back, pause, and think. This seemed important within a context of international relations theory that was set by breathless theorizing about methods that often remained somewhat detached from larger questions of global governance. For example, should academics feel a responsibility towards engaging with governance outside academia—a question that James Tully's *Public Philosophy in a New Key*[1] centrally addresses, and which Markus Kornprobst

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1. James Tully, *Public Philosophy in a New Key—Volume I: Democracy and Civic Freedom* (New York: Cambridge University Press, 2008); James Tully, *Public Philosophy in a New Key—Volume II: Imperialism and Civic Freedom* (New York: Cambridge University Press, 2008).

also answers positively in his notable paper on "polylogue" beyond the "discipline."[2]

Against this background the book addresses "contestation" as a concept in international relations theory. As Jonathan Havercroft notes in his introduction, the concept had been used by lawyers undertaking research on compliance with norms more than a decade ago,[3] and I have used it in order to shed a critical light on constructivist norms research.[4] I am encouraged that *A Theory of Contestation* speaks to scholars with such distinct research agendas as represented by the commentators in this symposium. Consider, for example, Christian Bueger's use of *A Theory of Contestation*'s methodological framework for evaluating the constitution of "layered knowledge" in a case study on piracy[5] on the one hand, and Lisbeth Zimmermann's reading of *A Theory of Contestation* as offering the possibility of "adapting Habermasian democratic theory to the international conditions of diversity"[6] on the other. The theory appears to be speaking to both those with predominantly empirical research agendas and those with predominantly normative agendas.

In the wider context of international relations theory, *A Theory of Contestation*'s main role may be that of a transmission belt that offers the means of linking norms research with recognition theory in order to address issues of justice under conditions of global diversity. Further research building on *A Theory of Contestation*'s focus on the "is" (what is visible?) and the "ought" (what is possible?) of norms research stands to benefit from current cutting edge theoretical advances in both international relations (e.g., on pragmatism, transnational law) and recognition theory (e.g., theories of justice, global constitutionalism). The following will elaborate on these prospects. Given the limits of space it is impossible to engage in all due detail with the comments which were made by the authors of this symposium. This concluding article will therefore elaborate in more detail on three central themes. The first is about theorizing practice in the contingent process of modern state building. It highlights the conceptual distinction between

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2. Markus Kornprobst, "When the Discipline is Not Enough: Politics, Communication, and Scholarship," a paper presented at the ECPR Joint Workshop Sessions, Pisa, Italy, April 24–28, 2016.

3. Jonathan Havercroft, "Introduction," *Polity* 49 (2017): xxx–xx.

4. Antje Wiener, "Contested Compliance: Interventions on the Normative Structure of World Politics," *European Journal of International Relations* 10 (June 2004): 189–234.

5. Christian Bueger, "Practices, Norms and the Theory of Contestation," *Polity* 49 (2017): xxx–xx.

6. Lisbeth Zimmermann, " 'Inter-National' Habermas: Contestation and Understanding under Conditions of Diversity," *Polity* 49 (2017): xxx–xx.

regulatory and customary practices of constitutionalism, which informed the book's intention to highlight the impact on cultural diversity on norms research in international relations. The second theme addresses the potential of a bifocal approach to norms research that promotes a dual focus on empirical and normative issues. This aspect was raised in the contribution by Havercroft and Duvall in particular.[7] The third theme considers the question of labeling, i.e., would a label of "agonistic constructivism" be more appropriate than one of "critical constructivism" for the epistemological stance that underlies *A Theory of Contestation*.

## Two Constitutional "Practices": Regulatory and Customary

My previous research addressed the interplay between Tully's two broadly distinguished regulatory and customary constitutional practices, and accounted for the latter by reconstructing normative structures of meaning-in-use in four arenas.[8] I made two conceptual claims on the basis of this research. First, I distinguished three types of norms as ideal-types in order to facilitate conversation among various disciplines that addressed norms; second, I distinguished three practices of norm validation in order to account for the spatially constrained or enabled access to contestation. *A Theory of Contestation* works with both distinctions in order to flesh out the "is" and the "ought" of norms brought to the fore through contestation. The question is, if contestation is central for establishing legitimacy through ongoing access to contestation in domestic politics, what are the conditions for contestation in global governance?

*A Theory of Contestation* addresses this question along three operative dimensions that are explored with reference to three thinking tools (the normativity premise, the diversity premise, and cultural cosmopolitanism). In a first step, the book conducts a literature review in order to establish which literature addresses contested normativity and, therefore, would allow for an understanding of contestation as a norm-generative practice.[9] The second step asks how to address the legitimacy gap in global governance empirically.[10] And the third step pursues distinct degrees of norm contestation that stand to be expected vis-à-vis the three types of

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7. Jonathan Havercroft and Raymond Duvall, "Challenges of an Agonistic Constructivism for International Relations," *Polity* 49 (2017): xxx–xx.

8. Antje Wiener, *The Invisible Constitution of Politics: Contested Norms and International Encounters* (Cambridge, U.K.: Cambridge University Press, 2008); Antje Wiener, "Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations," *Review of International Studies* 35 (January 2009): 175–93.

9. Antje Wiener, *A Theory of Contestation* (Berlin: Springer, 2014), 27.

10. Ibid., 33ff.

norms. Due to their wide moral range and thin specification, the substantive normative meaning of fundamental norms (type 1 norms) is most likely to be contested, and standardized procedures (type 3 norms) are least likely to be contested. By contrast, organizing principles (type 2 norms) evolve through the very practices of policy making and politics; they therefore reflect a strong potential of norm-ownership. As such they are more likely to be considered as shared reference points by the involved stakeholders. Follow-up research that builds on these findings of the *Theory of Contestation*'s focus on contested norms of global governance will turn to contested norms at distinct layers of global society. Here the research objective is set on the constitution of normative grids through contestatory practices. These "normative grids" are defined as the spaces where the meanings of norms that underlie or are bound up in agents' practices—and thus orient agents in their everyday business—form.[11] Against this backdrop I explored how to enhance stakeholder access to regular contestation.

Is there anything for students of international relations to gain from studying the relation between the two constitutional practices that Tully has called "regulatory practice" and "customary practice"?[12] Tully has brought the interplay to bear in his *Strange Multiplicity*, which makes the hidden constitutional practice of indigenous people in Canada visible. In *The Invisible Constitution of Politics*, I used these two constitutional practices to account for hidden meanings of fundamental norms in Europe, in order to highlight the impact on hidden cultural meanings on European governance.[13] As Tully suggests, it is important to focus on customary practices which for centuries have been pushed beneath the map of modernity by an emphasis on regulatory practices, in order to bring culture to bear in negotiations over the norms that govern us today.[14]

Many philosophers and political theorists have come to share this concern for bringing back a "cultural" interpretation of governance norms in order to address diversity through critical engagement with citizenship, migration, minority rights,

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11. See Maren Hofius, "Community at the Border or the Boundaries of Community? The Case of EU Field Diplomats," *Review of International Studies* (2016): 1–29; for the first mention of the concept, see Neil Walker, "Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders," *International Journal of Constitutional Law* 6 (2008): 373–96; see also Christian Bueger, "Pathways to Practice: Praxiography and International Politics," *European Political Science Review* 6 (August 2014): 383–406.

12. James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, U.K.: Cambridge University Press, 1995).

13. Wiener, *Invisible Constitution of Politics* (see note 8 above).

14. Tully, *Strange Multiplicity* (see note 13 above); Tully, *Public Philosophy in a New Key—Volume I*, 4 (see note 1 above).

justice, or Postcolonialism. International relations theory has seen a parallel move towards the appreciation of cultural experience and of its impact on international relations. There has been an unprecedented rise in research focusing on practices, research based on an ever more refined array of methodological tools from the sociology of knowledge, pragmatism, discourse theory, and ethno-methodology. These tools from neighboring disciplines include social anthropology, legal anthropology, hermeneutics, and especially sociology. In the process, cultural knowledge has broadened research on norms in particular. While the normative concern for justice is clearly more of a motivation for recognition theorists, much of current international relations research on practice reflects a critical engagement with the lingering influence of modernity that is carried by the "Westphalian" narrative.[15] The shared interest in bringing heretofore hidden cultural meanings to the fore by studying practices is thus a common research objective.

*A Theory of Contestation* explores the normative potential of cultural practice through its third thinking tool, cultural cosmopolitanism. In addition, and following recognition theory, which implies that the contestation of governance norms must at all times be possible for those governed by these norms,[16] *A Theory of Contestation* identifies empirical access points for recognition theory to be applied to global governance. With reference to sectoral overviews in security, climate, and fisheries governance, the book suggests that, given the current conditions of politics and policy making in these sectors, the meso level, which is situated between contested fundamental norms at the macro level (type 1 norms) on the one hand, and regulatory standards at the micro level (type 3 norms), on the other, offers the most obvious site from which to develop pathways that facilitate enhanced access to participation for stakeholders. The meso level is conceptualized as the space where type 2 norms evolve through practice (e.g., policy making and/or politics). As such it offers a conceptual access point to theorize about and explore the conditions of access to regular contestation for stakeholders. Relatedly, it is at this level where these conditions then stand to be probed with a view to enhancing access to participation at specific sites where normativity is negotiated. This has been demonstrated by the norms of common but differentiated responsibility in climate governance, by the precautionary principle and agreements on total allowable

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15. Alister Miskimmon, Ben Loughlin, and Laura Roselle, eds., *Strategic Narratives: Communication Power and the New World Order* (London: Routledge, 2013).

16. James Tully, "Recognition and Dialogue: The Emergence of a New Field," *Critical Review of International Social and Political Philosophy* 7 (2004): 84–106.

catch in fisheries,[17] and by the responsibility to protect norms in security governance.[18]

The focus on this meso level has generated some confusion among readers, who rightly ask whether *A Theory of Contestation* would suggest that norm contestation was to be located exclusively at the meso level and brought to the fore by reconstructing practices at the "referring stage" of norm implementation (compare Figure 1 below).[19] The answer is of course no. Rather, the meso-level cases have been chosen as exemplary cases in order to identify and analyze the most likely windows of opportunity for policy change. As noted above, it remains for follow-up research to empirically examine the emergence of normative grids in distinct societal scenarios of normative conflict on a horizontal and vertical global scale (i.e., including national, regional, and global scenarios of contested normative meaning.) This said, the typology of norms is meant to allow for types of norms to be changed and accordingly moved up and down the column (compare Figure 1 of my summary in this symposium).[20] As Hafner-Burton and Pollack have shown in their analysis on the policy of gender mainstreaming, the validity claims of some norms change through the process of policy making. For example, the fundamental norm of gender equality has become less influential than the organizing principle of gender mainstreaming.[21] When applying the typology that is used by *A Theory of Contestation*, this means that effectively the gender equality norm moved down the scale from being considered a fundamental norm with wide-ranging moral impact (type 1) to becoming an organizing principle (type 2). I would also concede to my critics that the typology should not be restricted to levels of governance and also refer to the study of contested norms at distinct layers of society in order to stress the impact of social interaction vis-à-vis norms.[22] International relations theory then conceptualizes these societal layers as the locales where normative structures

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17. See, for example, the regional fisheries organizations that became the space for the development of novel procedures for renegotiating catch percentages on an annual basis rather than establishing non-negotiable fixed quotas.

18. Wiener, *Theory of Contestation*, chapter 6, 63ff (see note 9 above); Antje Wiener, "Contested Norms in Inter-National Encounters: The 'Turbot War' as Prelude to Fairer Fisheries Governance," *Politics and Governance* 4 (August 2016): 20–36.

19. See Havercroft and Duvall, "Challenges of an Agonistic Constructivism" (see note 7 above)

20. Wiener, "*A Theory of Contestation*—A Concise Summary of Its Argument and Concepts," Figure 1, *Polity* 49 (2017): xxx.

21. Emilie M. Hafner-Burton and Mark A. Pollack, "Mainstreaming Gender in the European Union: Getting the Incentives Right," *Comparative European Politics* 7 (April 2009): 114–38.

22. Antje Wiener, *Constitution and Contestation: Norms Research in Global Governance* (under contract with Cambridge University Press).

of meaning-in-use are re-/enacted. Reconstructing these normative structures allows researchers to unearth normative grids, from which can be derived the most important pathways to participation in terms of facilitating access for stakeholders.[23]

## A Bifocal Approach: Impossible?

A bifocal approach is helpful because it "clarifies empirically and normatively the recognition and distribution of aspects of contemporary struggle and their interaction without reducing one to the other."[24] To illustrate the argument for a bifocal—an empirical cum normative—research perspective, consider this situation in twentieth-century Europe: after two decades of citizenship practice, the legal institution of European Union citizenship was stipulated in the 1993 Maastricht Treaty's Article 8. This development created a nice puzzle for political science research, for it established citizenship in a non-state. If citizenship was not defined by the two pillars of membership rights and shared national identity of a given political community,[25] then what was the meaning attached to this citizenship? Following Tilly's relational historical research on state-building,[26] the research assumption was that, since the European Community (later European Union) was defined as a growing community of multiple nationalities, the meaning of Union citizenship must be reconstructed with reference to the evolving practice of European citizenship.[27]

To provide an example, the following sketches the empirical dimension of an applied bifocal research approach in order to understand the puzzling introduction of European Union citizenship. If citizenship is a core norm to the process of modern state building, and the European Union was to remain a non-state polity,

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23. Hofius, "Community at the Border" (see note 12 above); see also the contributions to this symposium by Bueger (see note 5 above), Sasikumar S. Sundaram, "Norm Contestation and Global Governance: Taking Actor Configurations and Practical Reasoning Seriously," *Polity* 49 (2017): xxx–xx, and Brent Steele, "Broadening the Contestation of Norms in International Relations," *Polity* 49 (2017): xxx–xx.

24. James Tully, "Struggles over Recognition and Distribution," *Constellations* 7 (December 2000): 471.

25. Yasemin N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994).

26. Charles Tilly, ed., *The Formation of National States in Western Europe* (Princeton, N.J.: Princeton University Press, 1975).

27. Carlos Closa, "Citizenship of the Union and Nationality of Member States." *Common Market Law Review* 32 (1995): 487–513; Elizabeth Meehan, "Citizenship and the European Community," *Political Quarterly* 64 (April 1993): 172–86.

how can the successful stipulation of the fundamental norm of citizenship in the Maastricht Treaty be explained? Several methodological steps are key when addressing the citizenship puzzle: first, reconstruct the stages of evolving European citizenship practice since it was first conceived (policy analysis); second, explore the meanings attached to Union citizenship by the multiple state and non-state actors, such as NGOs and advocacy groups (discourse based on documents and interviews); and third, reconstruct and compare competing constitutional narratives of the EU and of its member states, and evaluate their impact on the relation between citizenship and the authority of the states (normative evaluation). In addressing the puzzle of citizenship in a non-state, three norm types and their validation along formal, social, and cultural validation shed light on the "normative grid" of citizenship in a non-state. The research begins from the common understanding of two-tiered citizenship (rights and identity) as a fundamental norm of modern nation states. The research question—as pursued in my own earlier work on "European" citizenship practice[28]—was triggered by the empirical observation that Union citizenship presents a puzzle to modern citizenship theory, for it adds citizenship to an organization that is not a state. Note that the bifocal approach could, however, have taken the opposite perspective, arguing that citizenship is too exclusive a concept and that therefore other more inclusive forms of citizen participation need to be developed.[29]

In 2008, fifteen years later, in a notable legal opinion that was offered by the Advocate General to the European Court of Justice in the Rottmann case,[30] three layers of meaning were identified as constitutive for citizenship in the EU: national citizenship (in the case at hand, Austria and Germany), Union citizenship (as stipulated by Article 17 of the Lisbon Treaty) and European citizenship (as constituted through partaking in cultural practices in the EU). The third layer, European citizenship, was most notable, for it had never been formally defined as such before. And yet, as the opinion of Poiares Maduro, the European Court of Justice's advocate general, suggested, it was sound enough to provide the rationale for arguing that, based on European citizenship, it is possible for a plaintiff

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28. Antje Wiener, *"European" Citizenship Practice: Building Institutions of a Non-State* (Oxford, U.K.: Westview Press, 1998).

29. See, for example, the work on citizenship by Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in *Feminism and Political Theory*, ed. Cass Sunstein (Chicago: University of Chicago Press, 1990), 117–42.

30. For details of Case C-135/08, *Rottmann vs Freistaat Bayern*, see Judgment of the Court, March 2, 2010, at http://curia.europa.eu/juris/document/document.jsf?docid=75336&doclang =EN.

to avoid statelessness. In this case, the plaintiff was an individual, who, through a complex series of circumstances, was faced with losing both German and Austrian citizenship, and therefore also, by definition, Union citizenship. Notwithstanding the eventual outcome of the case, the advocate general's reference to the concept of "European Citizenship" suggested that cultural practices matter for the meaning-in-use of citizenship by introducing a third category of citizenship to the European citizenship discourse.

This story sheds light on how contestations of one norm (i.e. citizenship) at one of several societal layers contributes to change the meaning of a norm, through re-enacting its normative meaning-in-use. Through contestation, the normative meaning-in-use of citizenship is re-enacted as one of many possible contestations about citizenship. The deliberations in the Rottmann case suggest that cultural practice potentially affects the meaning that stakeholders assign to (or expect of) fundamental norms such as citizenship. In addition, the citizenship story sustains one central claim of *A Theory of Contestation*, namely that norm contestation (whether expressed through the mode of arbitration, deliberation, contention, or justification) can occur at various layers of the normative structure, including national, regional, or global governance. It also shows that through re-enacting meaning-in-use, contestation affects the normative grid of global *society*. How did Union citizenship become formally stipulated, and how does this additional citizenship affect national citizenship in the European Union's member states? What does this institutional change imply for our perception of citizenship as a core constitutional norm, a central element of the "Westphalian constitutional narrative"? To probe these research questions, bifocal research needs to focus on the interplay of the two constitutional practices—regulatory and customary.

Norms research in international relations theory holds that norms have a dual quality, evolve through social interaction, entail validity claims, and are by and large re-enacted as part of the normative structure of meaning-in-use of any given society. Given these three basic assumptions about the way norms work, it follows that once societal boundaries become blurred through border-crossing, it is international encounters that become the sites where contested norms of governance are most likely to become visible. At the moment of contested inter-national encounter, various contestatory practices are possible. Recognition theory would suggest that it is precisely these practices that should be enabled in order to insure the practice of "civic freedoms" for global citizens. At the same time, these freedoms could and should be enhanced through active engagement by scholars who are bringing their knowledge, thus sustaining and facilitating ongoing contestation about the norms of governance. *A Theory of Contestation*'s "principle of contestedness,"

as a meta-organizing principle of global governance, represents this interaction between the "is" and the "ought" of contestation. By applying a bifocal approach, it becomes possible to reveal moments of contestation as windows of opportunity for advancing civic freedom in global society. The concept of access to regular contestation envisages contestatory practices as the civic freedom that enables citizens' empowerment through "continuing contestation and negotiation (of norms) by those subject to (governance relations)."[31] Tully's theory uses a meta-concept of the global citizen "to refer to a person who is subject to a relationship of governance (that is to say, governed) and, simultaneously and primarily, is an active agent in the field of a governance relationship."[32] This citizen agency is informed by and constitutive for legitimate governance wherever practiced.

I would therefore defend the bifocal perspective, while also acknowledging the inevitable conceptual challenges involved in taking a bifocal research perspective and conceding that it requires much more elaboration through further research. It also needs to be probed by rigorous and committed interdisciplinary scholarship. Indeed, this symposium's contributions offer an excellent perspective on directions such conversations could take in the future.

For example, Bueger's application of *A Theory of Contestation*'s norm types and the steps through which multiple agents tease out layered knowledge in the Somali piracy case demonstrate nicely how contestatory practice changes the normative grid in a society with changing political and legal authority.[33] In this setting, the struggle for recognition takes place in the sector of oceans governance (including security, fisheries, and marine governance). And Bueger himself, as a scholar, engages responsibly with the struggles at hand. While taking a pragmatic approach, this kind of empirical research is vital for identifying contested norms and changing layers of knowledge.

Havercroft's study of the negotiation of the Indigenous People's Working Group at the United Nations offers another excellent illustration of *A Theory of Contestation*'s three practices of norm validation (formal, social, and cultural), as applying to all three norm types at all three stages in the process of norm negotiation: constituting, referring, and implementing.[34] While in principle all global citizens should have access to contestation, in current global governance settings this is not the

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31. Tully, *Public Philosophy in a New Key—Volume I*, 4 (see note 1 above).

32. Ibid., 3; see also James Tully, *On Global Citizenship* (London: Bloomsbury Academic, 2014).

33. Bueger, "Practices, Norms," xxx [pp. 2–3 in ms.] (see note 5 above).

34. Havercroft and Duvall, "Challenges of an Agonistic Constructivism" (see note 7 above).

case, and sectoral analyses show that unequal access to contestation prevails. Figure 1 below charts the stakeholder opportunities to access contestation with reference to *A Theory of Contestation*'s typology of norms (in the left hand column), and the stages of norm implementation (i.e., constituting, referring, and implementing on the top row). According to the theory of contestation, the relevant research questions are: who has access to contestatory practice in this process? By which means ought access to contestation be facilitated to a wider range of stakeholders? What kinds of "pathways" may be configured in order to enhance this access? These are leading questions for future research on norms.

The following figure, which includes an overlay from Figure 1 in my first article in this symposium,[35] offers a perspective on the methodology that is required in order to allocate institutional pathways in order to establish access to contestation for the involved stakeholders. In distinction to *A Theory of Contestation*'s use of levels of governance, this reply to my critics has picked up on a number of queries regarding the spatial and societal locales of norm contestation. While *A Theory of Contestation* addressed the politico-legal regulatory context of global governance organizations, further work would benefit from studying the interplay between the regulatory global governance context and the customary societal context. Figure 1 reflects this interplay and presents a model for allocating pathways in order to enhance and/or establish stakeholder access to contestation.

The figure links three methodological angles: first, the sites where norms are contested at the macro, meso, and micro layers of any given society (on the *y*-axis); second, the stages of norm implementation (on the *x*-axis), and third, the practices of norm validation on the cycle of contestation (the arrow). Following *A Theory of Contestation*'s core argument about the principle of contestedness—that norms are always in principle contested and that this principle's effect in international relations is enhanced by inter-cultural relations—the arrow in the figure indicates that the three practices of norm validation (i.e., formal validation, social recognition, and cultural validation) show whether stakeholders have full access to contestation or whether this access is restricted to only one or two out of the three possible practices of validation. The shaded area on the meso layer of society indicates the heretofore largely under-researched spatial and societal locales, especially in international relations theory.

The question raised by Havercroft and Duvall is whether contestation is limited to what *A Theory of Contestation* calls the "referring stage" that is, the stage in the process of norm implementation where norms ought to become contestable

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35. See ibid., xx.

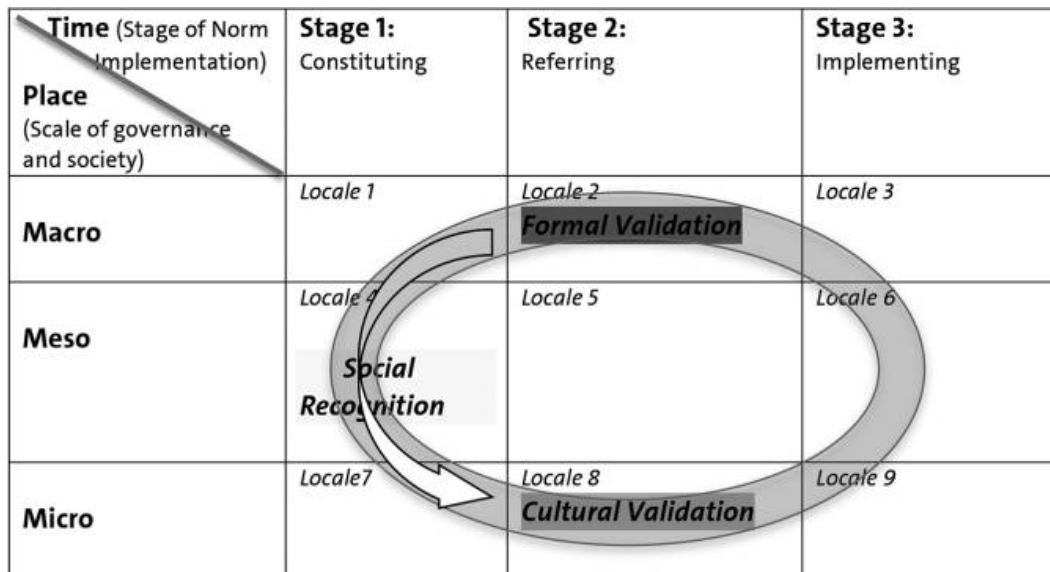| Time (Stage of Norm Implementation) / Place (Scale of governance and society) | Stage 1: Constituting | Stage 2: Referring | Stage 3: Implementing |
|---|---|---|---|
| **Macro** | Locale 1 | Locale 2 Formal Validation | Locale 3 |
| **Meso** | Locale 4 Social Recognition | Locale 5 | Locale 6 |
| **Micro** | Locale 7 | Locale 8 Cultural Validation | Locale 9 |

Figure 1. Practices of Norm Validation on the Cycle of Contestation
*Source*: Adapted from Wiener, *A Theory of Contestation*, Figure 2.1, 21 (see note 9 above); and Wiener, "Concise Summary," in this symposium, Figure 1, xxx (see note 20 above).

by the involved stakeholders. Here, the normative impact of the bifocal approach comes into play, for in Figure 1 the referring stage indicates the location in the process of norm implementation where stakeholder access to contestation should take place prior to taking the decision about implementation. This putting into practice includes the stakeholder's reference to a fundamental norm and the cognitive and habitual process of engaging in the necessary steps in order to implement the norm with reference to appropriate standards and regulations. This stage, where stakeholders ought to be enabled to make reference to a given norm when participating in negotiations about their meaning, has so far been little explored. My response to this important question is therefore that the figure that depicts the cycle of contestation (see Figure 1 in my "summary" article in this symposium[36]) includes an arrow that is meant to show that, depending on the type of actor ($y$-axis) and the context of norm implementation ($x$-axis), some actors may have access to practicing all three types of validation, while others will be in positions that only allow for access to one or two out of the three possible dimensions. That is, the normative structure of meaning-in-use that is re-enacted through contestation contains normative grids that are more compatible with the background experience of some actors than with that of others. Research that focuses on the three—rather than just the two—practices of norm validation will be

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36. See Antje Wiener, "A Concise Summary," xx (see note 33 above).

able to identify and explain why norms are contested, that is, why stakeholders clash over the meaning of a norm.

The positioning on the cycle therefore indicates power differences that are rooted in unequal access to contestation. Specifically, those actors with access to all three dimensions of norm validation are enabled to fully engage in norm contestation. According to the overlay of the cycle metaphor onto the social order model in Table 2, this is the case only for the masters of the treaty (to use a common term from legal studies). By contrast, the majority of stakeholders and users of norms enjoy only limited access to contestation. *A Theory of Contestation* seeks to enable researchers to take account of and critically engage with such situations of unequal access. As noted in my summary of the book in this symposium, while access to contestation is the goal, the point is to think about ways of stakeholder empowerment through more balanced engagement with the norms that matter to stakeholders in selected sectors as a means of reducing political conflict in global governance. Unless conditions for access to contestation are improved through appropriate means, the perceived legitimacy gap that is defined by access to contestation will maintain a situation of injustice.

Such an improvement remains to be achieved through the interactive struggle of global citizens. Whether and by which means the legitimacy gap might be filled remain challenges for international relations students. These challenges, I would suggest, should be addressed by drawing on the ongoing conversation between recognition theory and international relations norms research.

## "Agonistic" Constructivism?

Some, albeit not all, of the contributors to this symposium may agree with Havercroft and Duvall's proposition to emphasize the use of an agonistic constructivist label in order to enhance *A Theory of Contestation*'s function as a reference point for advanced theoretical debate in international relations theory. As they see it, the label of "agonistic constructivism" would provide a clear distinction of my approach from both "liberal" and "critical constructivism."[37] While I have no problems with that label, their distinction only makes sense when applying a narrow definition of critical theory. Here I beg to differ. Once critical thought is defined to take into account the wide range of theoretical approaches that engage in research towards a more just and legitimate global society, critical

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37. Havercroft and Duvall, "Challenges of an Agonistic Constructivism," xxx (see note 7 above), [p. 1 in the ms. Version].

constructivism complements both the structural approach of conventional constructivism and the structuring approach of consistent constructivism by asking critical questions vis-à-vis the norms of governance.[38]

While agonistic constructivism would probably accommodate Steele's point about the robustness of norms, whether good or bad, and the danger of considering norms to be assigned an overwhelmingly positive function by liberal constructivists,[39] the main motivation of *A Theory of Contestation* is not to engage in labeling. Instead it seeks to advance norms research in international relations by drawing on interdisciplinary sources and developing a research framework based on thinking tools. To that end, *A Theory of Contestation* begins with the normative call for justice that is voiced by recognition theory. And as the contributions by Zimmermann, Havercroft, and Havercroft and Duvall rightly note, recognition theory centers on the normative challenge of how to enable mutual recognition in late modern societies under conditions of globalization and diversity.

As Tully summarizes in his quite optimistic outlook on peace drawing on the experience from the late twentieth century, recognition theory centers on "the *dialogical civic freedom* of the agents engaged in and affected by *struggles over intersubjective norms of mutual recognition*. It constitutes a new field that combines struggles over recognition and their reconciliation through dialogue in conjunction with other means."[40] This link between the "is" and the "ought" is inherent to the concept of contestation advanced by *A Theory of Contestation*. The focus on studying contestatory practices from a bifocal research perspective represents the methodological tool to identify the "other means" that are required to facilitate regular access to contestation. This access to regular contestation is a condition for justice as "the fundamental democratic or civic freedom of citizens—of having an effective say in a dialogue over the norms through which they are governed."[41]

In the wider context of various decades of engagement with constructivist theorizing both in international relations and in European integration studies, two concerns about potential conceptual flaws that emerge in the wake of construc-

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38. "So, perhaps it is appropriate that the Greek term for the arts of contestation, 'agonistics,' is now widely used to characterize these struggles, the complex set of civic virtues the participants acquire and exercise, and the conflicting goods they pursue;" James Tully, "Recognition and Dialogue," 100 (see note 17 above). Tully cites Russell Bentley and David Owen, "Ethical Loyalties, Civic Virtue, and the Circumstances of Politics," *Philosophical Explorations* 4 (2001): 223–39.

39. See Steele, "Broadening the Contestation of Norms"; cf. Sundaram, "Norm Contestation and Global Governance" (see note 24 above for both references).

40. Tully, "Recognition and Dialogue," 85; emphasis in original text (see note 17 above).

41. Ibid., 99.

tivist norms research do play a role with regard to *A Theory of Contestation*'s positioning vis-à-vis international relations theory. One concerns the uncritical assumption of a liberal community, while the other concerns the conceptualization of "contestation" as reactive rather than proactive. Both flaws reduce the potential of norm research in international relations. While this has led pragmatist practice theorists to discard norm-oriented research altogether and to study cultural institutions and their meanings instead,[42] I contend that disregarding the dual quality of norms as structuring and constructed amounts to throwing the baby out with the bathwater.

My first concern about international relations theory lies with approaches that work with the assumption of a liberal community that has a given identity.[43] Students working on the basis of this assumption will only reiterate what they see under the "liberal lampshade." Within the boundaries of this imagined liberal community, which is limited by the epistemological standpoint held by "liberal" constructivist norms research (see the article by Havercroft and Duvall in this symposium[44]), no appropriate answer or methodological advance is logically possible. That is, no methodology, however well refined for grappling with the micro- or macro-level agency, is able to reach beyond the given boundaries of the liberal community of (largely "Western" or "Northern") states. For, epistemologically speaking, the community is a precondition for engaging with the ontology of norms, according to this constructivist standpoint.[45] Subsequently, both the emergence and the potential for change of that community slip out of focus. Given the equation of the liberal community with the system level, methodological advances inevitably center on the principles, procedures, and practices *of* that community. And the research interest in solving problems trumps that of advancing change.

If, however, norms entail a dual quality as structuring and constructed, as the commonly shared dictum in norms research holds, the liberal constructivists' preference for the structuring quality of norms over the constructive quality of norms means that the norm generative impact of social practice remains bracketed out. This focus on the constituted role of social practices is taken on by the

42. Christian Bueger and Frank Gadinger, "The Play of International Practice," *International Studies Quarterly* 59 (September 2015): 449–60.

43. Peter Katzenstein, *The Culture of National Security* (New York: Columbia University Press, 1996).

44. Havercroft and Duvall, "Challenges" (see note 7 above).

45. For the discussion of standpoints and their enabling vs. disabling role in the social sciences, see Sandra Harding, *Feminism and Methodology: Social Science Issues* (Bloomington: Indiana University Press, 1987).

"practice turn" literature, which takes the constitutive effect of social interaction further. As noted in *A Theory of Contestation*:

> if international relations are defined as relations among actors of different national roots, the community ontology makes the norm-generative practice of international relations (understood as relations among actors of different national roots) almost impossible. This situation is due to the underlying assumption that norm following (i.e. compliance with a norm) depends on the prior existence of a community providing the social environment that generates social recognition and appropriateness. Absent a community, both become impossible to obtain. The assumption that agents need to be operating within communities of practice in order for competent performance to be recognised by others[46] raises two questions: First, how do communities of practice emerge if not through practice? Second, how is the norm-generative capability of practice addressed by the underlying community ontology?[47]

For supporters of the communities of practice approach, the community is consolidated by practice understood as "competent performance."[48] While this approach offers a methodological advance, its epistemological standpoint vis-à-vis the liberal community remains unchanged.

> Pending on the respective choice of epistemological position therefore, the practice of norm contestation can have two different effects. On the one hand, contestation may establish which norm is appropriate and how to implement it. On the other hand, contestation is understood as adding to the re-/construction of normative meaning. In the latter case, contestation may either generate changing normativity through critical approval or identify disapproval. All depends on how normative substance is perceived by the respective agents and with regard to each of the three segments that are part of a cycle of potential contestation (compare Table 2.1).[49]

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46. Emanuel Adler and Vincent Pouliot, eds., *International Practices* (Cambridge, U.K.: Cambridge University Press, 2011).

47. Wiener, *Theory of Contestation*, vii–viii (see note 9 above).

48. Adler and Pouliot, *International Practices* (see note 45 above); Ole Jacob Sending and Iver Neumann, "Banking on Power: How Some Practices in an International Organization Anchor Others," in *International Practices*, ed. Emanuel Adler and Vincent Pouliot (Cambridge, U.K.: Cambridge University Press, 2011), 231–54.

49. Wiener, *Theory of Contestation*, 18–19 (see note 9 above).

This is a problem when mutual recognition is considered as the condition for justice under conditions of diversity in global governance. As Tully notes, in a remarkable distinction from Habermasian approaches, recognition cannot be established through contract, but requires open and ongoing critical engagement with the principles and procedures that guide and enable contestation.[50] And as Havercroft rightly emphasizes, this chosen ignorance about the origins of the community *of* practice is a concern.[51] For it raises the central question, what does a theory that centers on the "community of practice" have to offer, if it cannot explain the origin of its community *through* practice? *A Theory of Contestation* sets out to explore an answer to this question based on social science thinking tools, especially drawing on Tully's public philosophy. Insofar as it conceptualizes contestation as a social practice representing spontaneous or strategic objections to norms, and because the theory is meant to be norm generative, *A Theory of Contestation* may rightly be considered to be advancing constructivist international relations methodology, as Bueger suggests.[52] Yet, *A Theory of Contestation* is built on a two-tiered concern and therefore was intended to go beyond a mere methodological contribution to international relations.

Given that contestation has turned into a buzzword, my second concern is about the potential loss of analytical power. Contestation should not be reduced to reactive practice, but also should be explored as a proactive practice. This second concern addresses the normative quality of norms, that is, their impact as soft institutions beyond structuring behaviour. I argue that the dynamic that follows from the tension between the "is" and the "ought" of norms reveals the potential for change. To be sure, this dynamic needs to be derived through the analysis of practices,[53] and its assessment reveals important insights about the allocation of power in global governance. In order to study this allocation of power, norms research needs to begin addressing the question of whose norms count—thus moving on from the mere identification of weak, strong, social, cultural, or legal norms and who follows them. The crucial point here is that norm following is a contingent practice throughout the three stages of norm implementation (see the *x*-axis of Figure 1 in my initial contribution to this symposium[54]). At each stage, norm validation is conditioned by access to one of its three dimensions,

50. Tully, "Recognition and Dialogue," 101–02 (see note 17 above).
51. Havercroft, "Introduction," xxx (see note 3 above).
52. Bueger, "Practices, Norms" (see note 5 above).
53. Bueger and Gadinger, "The Play of International Practice" (see note 41 above).
54. Wiener, "A Concise Summary" (see note 33 above).

and at all times, actors' re-enactment of the "normative structure of meaning-in-use"[55] is informed by previous experience.

## Conclusion: Potential Follow-Up Research

By way of concluding, the following notes may serve as pointers for future debates about contestation theory, and especially the role of contestation as a practice that may lead to either conflict or consent. In this regard, the debate about "pathways to participation" that enhance stakeholder access to contestation as a means to improve the negotiation of normativity at the meso layer will become a central issue. If we give due consideration to the contingency and to the constraining and enabling access to norm validation, we can understand why, in a dispute in fisheries governance, one agent's preference for the rule of law is another agent's preference for sustainable fisheries. Both of these fundamental (type 1) norms were contested with the support of guns and diplomats in the 1995 "Turbot War" between Canada and the European Union. Only through ongoing engagement in various makeshift arenas did a shift of contestatory practice towards the meso level bring new type 2 norms (organizing principles) to bear. Thus, what was previously a given specification of total allowable catch, and therefore a type 3 norm, moved up to a type 2 norm through contestation: as an organizing principle, the norm now entails the possibility for stakeholders to negotiate percentages of the total allowable catch, taking into account their specific expectations and interests.[56] That is, specifying the total allowable catch allowed for mutual recognition and a settlement of this war-like dispute. What is notable here is the importance of distinct empirical perspectives on the reconstruction of scenarios of contestation, including shifts of practices between the macro, meso, and micro layers of normativity.[57] Regarding further research on contested norms, my hunch is that research seeking to reconstruct the sources of the current rule of law crisis in the European Union will find that the source of the crisis bears cultural roots. That is, the rule of law is not projectable from one socio-cultural context to another, and any change from one context to another will inevitably imply a change in the meaning of the norm. Rather, its application depends on distinct practices of val-

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55. Jennifer Milliken, "The Study of Discourse in International Relations: A Critique of Research and Methods," *European Journal of International Relations* 5 (June 1999): 232.

56. See Antje Wiener, "Normative Baggage in International Encounters: Contestation All the Way," in *On Rules, Politics, and Knowledge: Friedrich Kratochwil, International Relations, and Domestic Affairs*, ed. Oliver Kessler et al. (New York: Palgrave Macmillan, 2010), 21.

57. Wiener, "Contested Norms" (see note 19 above).

idation that are contingent. One could say, then, "the rule of law is not the rule of law is not the rule of law. . . ."[58] By recalling the distinct expectations brought into the dispute at inter-national encounters, and which are derived from past background experience, the constitutional narrative in the European Union may have to be amended and the so-called "Polish constitutional problem" be resolved by amending the EU's normative grid, instead of resorting to applying coercive instruments based on the EU's rule of law mechanism.

*A Theory of Contestation* addressed the potential of the concept of contestation as a condition for legitimate governance. Tully also argues that the contestation of norms of governance offers a point for intervention by learned academics.[59] This encounter between "struggling citizens" and "learned citizens" of an unlimited global society could become a driver for enhancing justice in global society. Drawing on two assumptions about the principle of mutual recognition and the critical intervention into contestatory practices, *A Theory of Contestation* explores "access points" for intervention by empirically accounting for and identifying conflict (based on norm contestation) and by normatively addressing the potential options for critical engagement. This project is conceived as a challenge that requires a bifocal research perspective insofar as it is neither exclusively empirical nor exclusively normative, but brings empirical and normative research into productive interaction. For norms research in international relations, so far the focus has been on empirical research studying the conditions for norm implementation, norm following, and compliance, with reference to sociological, discourse theoretic, and legal research methodologies. The open question is how to include normative perspectives.[60]

*A Theory of Contestation* set out to explore three things: the normative roots for a design that makes possible the reference to both the normalcy and the normativity of norms with reference to the international relations literature; its empirical basis by zooming in on practices of contestation so as to fill the "legitimacy gap" in global governance; and the revised conceptual approach offered by the theory of contestation which results from that analysis. To that end, it explores the "is" and the "ought" in global governance, starting with norms research in international relations.

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58. Compare Gertrude Stein's "a rose is a rose is a rose" in her poem *Sacred Emily*, in her *Geography and Plays* (University of Wisconsin Press, 1922), 178–88 at 187.
59. Tully, *Public Philosophy in a New Key—Volume I*, 5 (see note 1 above).
60. Compare Zimmermann, "'Inter-National' Habermas" (see note 6 above).

Contestation is all pervasive in international relations; that is, as the normative structure of meaning-in-use is re-enacted in inter-national encounters, contestation is expected at all levels of governance and at all layers of society. Subsequently, normative grids are constituted and reconstituted through stakeholder interaction about contested norms. This is expected to occur in particular in inter-national encounters where normative meanings-in-use are expected to clash. It is especially at the meso layer of society where such encounters stand to reveal the normative grids that indicate novel pathways to participation for stakeholders. These negotiations of normativity are likely to be perceived as more acceptable to the involved local agency than fundamental norms which are transplanted—often across a modern/postcolonial divide—and which therefore carry universal validity claims which bear little resemblance to local stakeholders' experience.[61] The challenge of how to accommodate diversity while maintaining the recognition of universal validity claims of norms remains to be studied in more detail by future norms research in international relations theory.

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61. Compare, for example, Enrique Dussel, "Eurocentrism and Modernity," *Boundary 2* 20 (1993): 65–76. I thank Jan Wilkens for this reference.