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**Normalcy and Normativity:  
Constitutive and Contestatory Practices in Global Governance**

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## **Abstract**

Recent contestations of basic values have brought the norm back to the centre of European governance. While the European Union (EU) has had its well documented share of contestations about basic values (compare for example, the White Papers, Hearings and the Constitutional Debate in the 2000s), it kept struggling about procedures to counter breaches with the norm on behalf of EU member states. In this regard, the high level contestations with regard to the constitutive dimension of the norm lacks a match in real politics (compare the failure to comply with the norm the sanctions against Austria in the 2000s to the current sanctions against Poland). While the mismatch between principles and practice of constitutional norms has been addressed by lawyers (see the debate on the Basic Values Protection triggered by Bogdandy et al. 2012 on the blog 'On Things Constitutional', see: <http://verfassungsblog.de/en/rescue-package-for-fundamental-rights>), and the EU has begun to apply the 'basic law mechanism' with regard to the recent Polish breach with the norm, governance theories remain notably silent when it comes to linking theory and practice of constitutional principles. The proposed paper addresses this gap. It defines the gap as a 'knowledge gap between constitutional principles and constitutional practice' (Wiener 2015). To that end, it advances a theoretical contribution that elaborates on the connection between norms and practices. It contends that, if intersubjectivity is constitutive for norms practices are key for validating normative claims about legitimacy. Yet, norms are often taken as a structuring rather than an agentic factor. The effect is a tipping of the balance between the perceived 'normalcy' and the 'normativity' of norms to the former. Subsequently, the very normative quality of norms remains to be explored in more detail. How do norms change through interaction in international relations, except from the strictly legal practice of 'norm-setting' where mere standards rather than moral principles or political ground rules are at play?

## Introduction

This paper makes a contribution to research on norms in international relations. Spanning beyond international relations theories proper, it works with a broad definition of norms as soft institutions of governance including rules, principles and standardised procedures whether within or beyond the contexts of nation-states.<sup>1</sup> The main point consists in advancing a theoretical contribution that elaborates on the connection between norms and practices. It is argued that, if intersubjectivity is constitutive for norms as conventional constructivists hold, it would follow that practices are key for validating normative claims about legitimacy. This argument notwithstanding, however, the jest of theory on norms considers them as a structuring rather than an agentic factor.<sup>2</sup> The effect is a tipping of the balance between the perceived 'normalcy' and the 'normativity' of norms to the former. Subsequently, the very normative quality of norms remains largely unexplored: How do norms change through interaction in international relations, except from the strictly legal practice of 'norm-setting' where mere standards rather than moral principles or political ground rules are at play? This paper suggests that in order to grasp the legitimacy of the norms that are constitutive for governance, practices matter in a twofold way. On the one hand, they matter for the very intersubjectivity inherent to norms as social facts<sup>3</sup>, on the other hand, they matter for the validity claim about a norm as a principled rule.<sup>4</sup> Taken together, both effects of practice shed light on the interrelation between normalcy and normativity as the sources of the intersubjective validity of norms. Most social constructivists have predominantly explored the first effect. That is, by reconstructing constitutive practices this research has engaged with the puzzle of norm-following behaviour against rational interests, on the one hand and the strategy of generating norm-implementation based on persuasion, on the other.<sup>5</sup> As a result, this research has sustained the leading assumption about the power of norms that is closely associated with the 'normalcy' that is either reflected in a norm's taken-for-grantedness or in its persuasiveness. In both cases, the norm's substance remained unchanged.

Notably, the invariable flipside of this research perspective was a growing analytical distance from the 'normativity' of norms. That is, while good arguments sustained a norm's successful implementation, the ontological emphasis bracketed critical engagement with the norm's content (Kratochwil 1984, 686). "Contestatory practices" were thus largely neglected<sup>6</sup>. Why do they matter, however? Take for example the ongoing contestations about the Responsibility to Protect (R2P) principle and its legal validity.<sup>7</sup> While international lawyers engage in debates about whether or not 'legality' has been established – and the finding was negative after the norm's first life decade (Brunnée and Toope 2010) - R2P continued to work as an influential norm of global governance, nonetheless. Whilst academic debates about the norm's legal status continued, elsewhere, contestatory practices critically questioned its substance at various 'sites' of global governance. These contestatory practices included public

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<sup>1</sup> Kratochwil 1984; March and Olsen 1989; Hall and Taylor 1996; Jenson and Merand 2010; Kratochwil and Ruggie 1986

<sup>2</sup> For an exception see Sikkink 2011

<sup>3</sup> March and Olsen 1989; Ruggie 1992

<sup>4</sup> Kratochwil 1984; Tully 1995

<sup>5</sup> Sikkink 1993; Finnemore and Sikkink 1998; Risse 2000; Müller and Deitelhoff 2005; Deitelhoff 2009

<sup>6</sup> Tully 2000; Pettit 2007

<sup>7</sup> Brunnée and Toope 2010; Hochstetler 2012; Welsh 2013

debates involving a wide range of state-plus actorship. That is, while the debate is still going on, the concept's intersubjective validity has been scrutinised by diverse validity claims that were uttered through contestatory practices. The debate was triggered by the BRICS states' critical contestation of the way human rights norms are to be implemented in the global realm, when they questioned the validity of the R2P norm and suggested to operate with the norm of "responsibility while protecting" instead.<sup>8</sup> This proposal was first made by the Brazilian President Dilma Rousseff and then triggered a series of contestations by state-plus actors who began to negotiate the norm at the meso-level. The long-standing contestations about the R2P norm demonstrate rather well that in order to fill the legitimacy gap, ownership matters more than legal validity of a norm.<sup>9</sup>

In light of the diversity of actors and the complexity of transborder practices that challenge and constitute the rules of global governance, the question arises whether constructivist "norm-based theories" have got it all wrong, as "culturalists" would have it<sup>10</sup>, or, whether constructivist norms research actually paved the way towards a better understanding of how norms work. This paper contends that turning away from norms research would amount to throwing the baby out with the bathwater. And, while the point that "norm-based theories struggle to explain the emergence and constitutions of norms themselves" (Bueger and Gadinger 2015, 3) is certainly well taken, this has never been the end of constructivist norms research. Quite the contrary is the case. This paper's aim is to explain why and how the call for abandoning research on norms in favour of pragmatist's "zooming in on a distinct practice, a crisis situation, or an object" (Bueger 2014) amounts to barking up the wrong tree. For while constructivists did choose to stress constitutive over evaluative norms and hence established an analytical preference for the normalcy of norms (Katzenstein 1996), the resulting emphasis on constitutive practices does not exclude the potential for the conceptual appreciation of cultural validity claims. As Friedrich Kratochwil had argued in the lead up to the constructivist research programme in international relations theories, intersubjective validation of norms depended on everyday practices (Kratochwil 1984). Yet, while he had pointed out the distinct quality carried by different types of norms (e.g. context-free universals or context-related particulars) and therefore urged to examine the sources of intersubjective validity that derived from "everyday language and its various language games" in more empirical detail (Kratochwil 1984, 707), the majority of social constructivist norms research settled in on working with the 'normalcy' of norms that emerged through constitutive practices.

While the emphasis on normalcy did result in an under-appreciation of the normativity of norms, there are good reasons for students of global governance to engage in norms research nonetheless.<sup>11</sup> This paper takes the case of the 'legitimacy deficit' in global governance in order to illustrate the importance of norms research. To that end it engages with normalcy and normativity. It argues that validity claims reflect distinct experiences and expectations, which differ according to where (at which time and place does the practice take place?) they are made and by whom (in which role is the actor carrying out the practice?). These experiences may carry legal or cultural validity claims. For example, with regard to distinct stages of the process of

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<sup>8</sup> Welsh 2013; Welsh et al. 2013; Bellamy 2008; Erskine 2014. The group of the BRICS states includes Brazil, Russia, India, China and South Africa, it has been forming since 2010 and includes only developing and newly industrialising countries that are, however, all G-20 members.

<sup>9</sup> Contributions to this ongoing debate have been quite diverse, for many, see Brunnée and Toope 2010; Bellamy 2008; Erskine 2014; Gholiagha 2014; Ainley 2015; Hansen-Magnusson and Vetterlein 2015.

<sup>10</sup> Bueger and Gadinger 2015, 3, citing Reckwitz 2002

<sup>11</sup> Compare Glaab et al. 2013; Deitelhoff and Zimmermann 2013; Hofius et al. 2014

norm implementation, distinct experiences come into play and thereby leave distinct margins for practical engagement in intersubjective validity claims. At the constituting stage the masters of a treaty hold a distinct role compared to the role of the individual norm-user at the implementing stage. As a result therefore, the *agency* required to engage in interactive practices of intersubjective norm validation depends on access to distinct practices of contestation. To bring normativity in then, these practices matter. They are enabled by global 'citizen agency' (Tully 2000).

To demonstrate why and how normativity matters to current research on global governance, the paper proceeds in four further sections. Section *one*, turns to the 'legitimacy deficit' discourse that has become a common reference in international relations theories, international law and the more recent interdisciplinary discipline of global constitutionalism and the respective approaches to theorising order in global governance as political, legal or social. Section *two*, recalls the conceptual distinction between context-free and context-based norms and suggests working with a typology of norms. Section *three* turns to the norm-generative practice of contestation in order to juxtapose the interplay between constitutive and contestatory practices in order to explore the normativity assumption. And the final section *four* illustrates the argument about the interplay between the normalcy assumption and the normativity assumption. To that end, it undertakes an overlay of two charts that are derived from critical norms research. The first chart includes the image of a cycle of contestation including three norm-validating positions. It is projected onto a second chart that entails a tableau to map potential norm-ownership in global governance.

### 1: The Legitimacy Gap

Notions of legitimacy and, relatedly, the strategies to warrant and maintain it depend on the type of "normative universe" to which researchers turn for reference,<sup>12</sup> i.e. whether to consider political, legal or social order as their meta-framework. The reference to the former two invariably results in strategies to compensate for the loss of authority with reference to changed political or legal institutions, principles and regulations.<sup>13</sup> Accordingly, research centres on changing organisational settings in light of politics and policy-making processes that moved out of reach of state-authority and hence posed a threat to the state's legitimacy. If, for example, state-authority needs to be re-established in order to counter emerging organisational rationales, possible solutions consists in reinforcing global institutions such as the UN or regional organisations such as, for example, the EU or the African Union, or re-organising national and sub-national institutions within the boundaries of nation-states. In turn, rather than targeting models of organisational authority or judicially bound legality beyond the nation-state, that effectively brackets the transnational sites that are potentially emerging through that practice, social order theorising brings them into view. The paper therefore works with social order as the meta-framework for normative negotiation (Onuf 1994). The meta-frame of levels of social order as sites where normativity stands to be negotiated therefore allows for examining contestatory practices in inter-national relations as both a source of political conflict and a condition for legitimacy of global governance. It thus facilitates better knowledge about the contingent effect of *contestatory practices* because of its capacity to link the wider context of socially constituted order of global governance (defining the 'sites' of

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<sup>12</sup> Reisman 1988; cited in Riles 2006

<sup>13</sup> This attempt is shown by the global constitutionalism literature, compare for many, Dunoff and Trachtman 2009; Peters 2009.

negotiation) on the one hand, with the narrower institutional context (defining the conditions of access to negotiation) on the other. These two wider and narrower contexts in which contestations within and through governance relations are practiced, open an innovative analytical angle that enables researchers to fill the legitimacy gap in global governance.

When approached from political or legal theories of normative order, the legitimacy deficit is identified with regard to formal institutions or constitutions and their principles, rules and regulations. Alternatively, when approached from policy studies the deficit takes the image of a gap that defines stakeholders' lack of access to contestation. This is the case with most sectors of global governance especially including security governance but also environmental governance, oceans governance or economic governance where research has identified a "legitimacy gap" between general agreement about fundamental norms (such as the sustainability norm), on the one hand, and standardized procedures to implement them on the ground (such as emission standards, mesh-size or fishing quotas) on the other.<sup>14</sup> The gap is therefore quite literally located 'in-between' fundamental norms at the macro-level and standardised procedures at the micro-level of global social order (see **Table 1**). Social constructivists have predominantly focused on compliance behaviour with regard to the fundamental norms of global governance (i.e. *type 1* norms such as for example human rights, democracy, sovereignty, the rule of law). The same accounts for research on compliance with standardised procedures. In turn, the 'in-between' space has been left as a gap.

#### **Table 1: The Legitimacy Gap in Global Governance**

**(About here)**

Typically, each level of norms involves a different type of actor. For example, while treaty law emphasises the importance of necessary degree of vagueness that is to be maintained by treaty language in order to facilitate agreement amongst the potential masters of the treaty, the main focus of political science research in international relations theories has been geared towards norm implementation by designated norm followers. The legitimacy gap stretches in the terrain between both. To fill the gap, we therefore need to work with the relative distance between the first and the third type of actors.<sup>15</sup> This work first and foremost involves charting the terrain marked by the gap. To that end more attention needs to be paid to the margin of interpretation, which is situated between making and concluding a treaty between the masters (Chayes and Chayes 1993, 180), on the one hand, and the implementation of norms which usually carried out by users as the designated norm-followers, and hence moved both in time and place,<sup>16</sup> on the other, by global governance research. By exploring this margin the legitimacy gap comes to the fore. Even though the legitimacy gap has been identified as a general global governance *problematique*, the meso-level of social order remains largely bracketed by global governance research. In fact, the research focus on fundamental norms and principles (macro-level, *type 1* norms) as well as standardised procedures, regulations and rules (micro-level, *type 3* norms), which traditionally prevails in the literature, effectively contributes to enhancing the legitimacy

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<sup>14</sup> See e.g. Bernstein 2011; Bernstein 2013; Falkner 2013

<sup>15</sup> Hurd 2009; Bernstein 2009

<sup>16</sup> For a counterfactual of this process consider the General Agreement on Tariffs and Trade (GATT) context in the 1980s, which "for the better part of the first decade" used to involve the same actors at the stage of signing and implementing the agreement (see Chayes and Chayes 1993, 181 fn. 18).

problem. For rather than filling the legitimacy gap, these studies inadvertently result in bridging the gap, at best, by enforcing norm-implementation through various interventions (*i.e.* blaming, shaming and so on). The emphasis on the constitutive force of practice led to leaving the contestatory potential of practice to one side. Whether constituted through everyday practices as *explanans* of decision making based on social recognition (*i.e.* normalcy based on appropriateness), or established by the strategically employed practice of arguing (*i.e.* normalcy power through persuasion), social constructivists have considered constitutive practices as exogenous sources of legitimacy. That is, the constitutive practice and the norm-following behaviour have been examined as sequences in the process of compliance. While based on the perception of appropriateness, norm following based on social recognition does not require norm-entrepreneurs, persuasion does, as the literature on advocacy groups has demonstrated very well.<sup>17</sup>

If – as social constructivists hold – in the absence of appropriateness it is possible to induce norm-following through norm-entrepreneurs (*i.e.* through arguing, blaming and shaming) then change with regard to either the norm-entrepreneurs or the conditions under which they act, should enhance the probability of addressing the legitimacy deficit in global governance. Taking a cue from the legitimacy deficit literature, the distinct logics inherent to political order and legal order theorising sustain this hypothesis. Accordingly, in their respective efforts to counter the legitimacy deficit cutting edge political science research has centred on the task of re-establishing state authority in beyond the state contexts, and legal scholars sought to counter the lack of legitimacy through enhanced regulation, legalization and constitutionalisation on the sites of global governance institutions.<sup>18</sup> They thereby circumvent the normative dimension of the legitimacy problem in global governance. Subsequently, the challenge of identifying strategies to fill the legitimacy gap at that meso-level of the global social order remains. The success of this task depends on identifying a theoretical pathway towards filling the gap between normative pre-conceptions that refer to universal beliefs, values and principles at the macro-level of social order, on the one hand, and practical enactments of normative meanings-in-use that are informed by individual “background experience”<sup>19</sup> that informs decisions to implement a norm at the micro-level of social order, on the other.

To summarise, in distinction from much of the literature that relies on the underlying political order (*i.e.* the institutions that are constitutive for and created by states) or the legal order (*i.e.* the norms and regulations that are defined by and definitive for the law), the meta-framework of social order allows for a relative autonomy from pre-conceived formal institutional settings (Onuf 1994, 2007; compare also Skocpol et al. 1984). While political and/or legal order theories focus on universal principles to establish and maintain legitimate political authority within a given organisational environment that is required for example in order to establish, supplement or complement the transfer of constitutional norms beyond state boundaries.<sup>20</sup> Social order theories conceptualise order as constituted through social practices. This constructive approach considers order as contingent and flexible, albeit stable over long periods of time.<sup>21</sup> Ruptures or similarly dramatic incidents, which lead to significant change of

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<sup>17</sup> Keck and Sikkink 1998; Risse et al. 1999

<sup>18</sup> Ikenberry and Slaughter 2007; Zürn et al. 2007; Bernstein 2009; Dunoff and Trachtman 2009; Klabbers et al. 2009; Pauly et al. 2010.

<sup>19</sup> Wenger 1998; Pouliot 2008; Adler-Nissen 2014

<sup>20</sup> Kumm 2009; Dunoff and Trachtman 2009

<sup>21</sup> Onuf 1994, 1989



this social order, have been identified as critical junctures by historical institutionalists in the 1980s.<sup>22</sup> All notions of order – political, legal and social – do refer to specific political, legal and societal institutions, to be sure. However, considering ‘social order’ a meta-reference opens a novel perspective on global governance as a living structure that is flexible and negotiable. It allows for an innovative angle on stakeholders’ access to contestation at distinct levels of social order. This access condition matters for empirical research that seeks to derive legitimacy gaps and for normative research to establish where normativity ought to be negotiated.

## 2: Whose Norms Count?

Models such as the “spiral model” (Sikkink 1993) have predominantly focused on compliance by political and social enforcement, including measures such as “blaming” and “shaming”<sup>23</sup> and “advocacy group” politics,<sup>24</sup> or behavioural mechanisms such as “internalisation” (Johnston 2001), “socialisation” (Schimmelfennig 2000) or even “coercion” (Checkel 2001). The former centred their argument of successful norm implementation on the logic of consequentialism based on principle agent or interest based models, the latter worked with the logic of appropriateness that follows sociological patterns of performance and behaviour.<sup>25</sup> These perspectives’ respective ontological conception of norms largely involved bracketing the very normativity of the norms. It was not until Jean Cohen raised the critical question about the fundamental norm of sovereignty in international relations and international law by asking “whose sovereignty” was actually at stake (Cohen 2004) that the issue of norm ownership was put on the map of norms research. It has been picked up only recently by development studies (Park and Vetterlein 2010) and the growing research on the responsibility to protect (Welsh 2013).

Following Kratochwil’s early emphasis on the distinct types of norms according to their constitution as either free of context or more particular (Kratochwil 1984), social constructivists first picked up on the constitutive impact of rules, and then critical constructivists turned to their contested quality. Early social constructivist research on norms has focused on compliance with the second type of norms.<sup>26</sup> In turn, later constructivist research engaged predominantly with Kratochwil’s call for a “unifying framework is to be found in a *theory of communicative action*”<sup>27</sup>, yet the important claim, that “everyday language and its various language games provide important insights” (Kratochwil 1984, 707) somehow went amiss as IR constructivists examined cyclical norm implementation enhanced by the input of advocacy groups that acted across international borders. Meanwhile international lawyers suggested “to focus on how norms are generated or evidenced by particular ‘incidents’,”<sup>28</sup> and comparative political science focused on institutional change and/or change of meanings through everyday practice was picked up by neo-institutionalist research that sought to explain policy change through social learning and new social movement struggle with reference to “the universe of political discourse” (Jenson 1989) and “paradigm shifts” (Hall 1993) that influenced policy decision-making, thereby documenting that the state’s autonomy was merely relative rather than

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<sup>22</sup> See for example the work of Claus Offe, Simon Bulmer, Kathleen Thelen, Sven Steinmo and others.

<sup>23</sup> Liese 2006, 2009; Sikkink 1993;

<sup>24</sup> Keck and Sikkink 1998

<sup>25</sup> Risse 2000; Pouliot 2008; Adler and Pouliot 2012; Sending 2011

<sup>26</sup> Compare the concept of ‘taken for grantedness’ that is central to assumptions about the structural impact of norms on behaviour Finnemore and Sikkink 1998; March and Olsen 1998; Price 1998

<sup>27</sup> Kratochwil 1984, 707; emphasis in original text; Risse 2000

<sup>28</sup> Riles 1999, 806, quoting Reisman 1988; as well as Riles 2006

absolute (Skocpol et al. 1984).

In conjunction with increasing transborder activities, international lawyers developed major contributions to the emerging field of global governance (De Burca et al. 2014). The main purpose of international law perspectives on global governance consisted in monitoring and managing the increasingly complex type of procedures and mode of inter-national (understood literally as between actors of different national background). With it the role of treaties as framework mechanisms for regulation obtained more prominence as well. Yet, as Chayes and Chayes noted as a mechanism of international law treaty law must remain vague, in order to facilitate the highest possible number of signatories<sup>29</sup>. And as Harald Koh has demonstrated, what follows after the masters of a treaty have agreed on the fundamental norms at its core is interpretation, a practice, which increasingly depends on the capacity to “translate” in light of intercultural encounters.<sup>30</sup> When the Chayeses and Koh observed the proceedings of international law, they focused on the legitimacy of the law and the mechanisms that facilitated its implementation. Against this background, it does not come as a surprise that Koh concurred with Henkin’s 1970s finding that almost all states complied with international law all most all the time.<sup>31</sup>

In turn, regarding the political science perspective, it was not particularly surprising that, on behalf of political science expertise, social constructivists noticed that in addition to “legal norms” their political science analyses of state behaviour confirmed this general assessment of compliance, not only with legal norms but also with so-called social norms.<sup>32</sup> What followed was a sociological turn that detailed compliance behaviour based on behavioural and cognitive studies of compliance with norms that were either generated by international law, or through the enhanced and multi-faceted transborder activities of globalisation.<sup>33</sup> Given the emphasis of research interested in the mechanisms, conditions and salience of processes of “norm diffusion”,<sup>34</sup> the notion of norm “contestation”<sup>35</sup> remained relatively under-researched at first. Despite Martha Finnemore’s query regarding the distinctness of legal norms (Finnemore 2000), norms research focused less on the evaluative quality of cultural norms (Katzenstein 1996) and mainly addressed issues of compliance or non-compliance, instead (Brosig 2012). This was in no small part due to the predominant literature on compliance research that drew from studies of organisational enlargement. Here, especially the work of Frank Schimmelfennig and Ulrich Sedelmeier<sup>36</sup> followed by research programmes on the aftermath of the massive enlargement of the European Union in 2004,<sup>37</sup> contributed to establishing a behavioural approach that is distinctly interest-based and which worked with the assumption that enlargement conditions<sup>38</sup> to establishing salient norms of democratic governance to former communist states in central and eastern Europe.<sup>39</sup> This literature was, however, preceded by plenty prior experiences of

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<sup>29</sup> Chayes and Chayes 1993

<sup>30</sup> Koh 1997; Koh 2014; Walker 2003

<sup>31</sup> Koh 1997, 2599; citing Henkin 1979, 47; notably, however, it was also Henkin who also noted that “(L)awyer and diplomat are engaged in a dialogue de sourds. Indeed, they are not even attempting to talk to each other, turning away in silent disregard.” (Henkin 1979, 2, cited in Riles 1999, 805)

<sup>32</sup> Sikkink 1993; Finnemore 1996; Katzenstein 1996; Risse, Ropp and Sikkink 1999; Checkel 1998

<sup>33</sup> Klotz 1996; Katzenstein 1996, Finnemore and Sikkink 1998; March and Olson 1998

<sup>34</sup> Börzel and Risse 2012; Solingen and Börzel 2014

<sup>35</sup> Contessi 2010; Deitelhoff and Zimmermann 2013; Rhodes and Harutyunyan 2010

<sup>36</sup> Schimmelfennig and Sedelmeier 2006, 2007

<sup>37</sup> Börzel and Risse 2012; Panke 2012

<sup>38</sup> See for example the EU’s 1993 Copenhagen Conditions, Sedelmeier et al. 1994.

<sup>39</sup> Compare for many Schimmelfennig and Sedelmeier 2007

conditional norm transport elsewhere. For example, development studies have addressed the highly contested politics of norm transfer through the International Monetary Fund and the World Bank in order to implement structural adjustment conditions of economic development in the global South in the 1980s. As the experience of political unrest, institutional malfunction, prolonged financial crisis and economic decline – especially in the developing countries and the newly industrialising states in Latin America – have demonstrated since the early 1980s,<sup>40</sup> norm transfer from one social context to another has proved more complex than previously anticipated.<sup>41</sup> For norm transfer does neither begin, nor end, with norm implementation. Instead, treaty norms or constitutional norms, for that matter, reflect normative authority that predates the treaty.<sup>42</sup>

As Kornprobst and Bjola have shown, the norm generative force of practices matters for the intersubjective validity of norms in global governance.<sup>43</sup> To explore this role of contestatory practice, it is helpful to recall Kratochwil's erstwhile distinction between norms that are effectively "context free principles" (universals), on the one hand, and rules that have come to entail "prescriptive force" through practice (particulars) on the other (Kratochwil 1984, 687). It is argued that, given the existing knowledge about the intersubjective quality of norms and relatedly their potential prescriptive force, the rather hesitant handling of normativity by constructivist work on norms is somewhat counter-intuitive. This may be due to the widely acknowledged *dictum* of the given social quality of norms, which meant that intersubjective validity came to be taken for granted. As Kratochwil had noted with reference to the regime debates in the 1980s, to probe the prescriptive quality of norms, a "unifying framework is to be found in a *theory of communicative action* for which everyday language and its various language games provide important insights. Since all compliance with norms involves linguistic, conceptual argumentation, it is through analysing the reasons specific to a given rule or norm type that the intersubjective validity of its prescriptive force can be established." (Kratochwil 1984, 707, emphasis added AUTHOR) Accordingly, the intersubjective quality of norms represents the pre-condition for both achieving legitimacy *and* for maintaining it in the absence of state rule (*i.e.* under conditions of anarchy). It follows that global normativity stands to be negotiated on a day-by-day basis and the prescriptive force of norms therefore needs to be assessed. These insights are not particularly novel, considering the past three decades of constructivists' research on norms in international relations. However, this literature has predominantly engaged in studying norms based on the assumption of their constituted normalcy. In the process, the assumption about their contested normativity has received less attention by constructivist research. Both are related though. As critical social philosophers have noted, contestatory practices engage with the normalcy of soft institutions by questioning their validity (Tully 2000). That is normative conceptions of practices both critically validate normalcy and extending beyond "exhibited regularities" (Rouse 2007, 3). To address the legitimacy deficit in global governance both dimensions of norms matter. Yet, despite extensive engagement with Kratochwil's erstwhile call to bring a framework of 'communicative action' to bear, the quality of norms has been predominantly conceptualised based on constitutive practice. This

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<sup>40</sup> O'Donnell and Schmitter 1986; Closa et al. 2015

<sup>41</sup> For a revised perspective that documents this learning process see e.g. Risse et al. 1999 where literally all blaming and shaming was on the targeted 'southern' global norm-users who were expected to learn from the global north, vis-a-vis the second edition which reflects the diverse interactions in global realm more succinctly, see: Risse et al. 2013.

<sup>42</sup> Dunoff and Trachtman 2009

<sup>43</sup> Kornprobst and Bjola 2011; Kornprobst 2012

emphasis on social construction, while the engine of the social constructivist research programme, has left the impact of contestatory practices largely to one side.

**Table 2: Norm Types, Contestation, and the Legitimacy Gap**

(About here)

These three distinct practices of validation come into play at the three stages of norm implementation: At the constituting stage treaties are agreed; at the referring stage the relevant procedures to implement treaty norms are identified by policymakers; and at the implementing stage norms are implemented by the designated norm followers. Following these distinctions, the conditions of access to regular contestation allow actors at the macro-level to develop mastership, ownership and – even though mediated – followership. By contrast, the micro-level actors' agentic capacity is reduced to norm following, hence the oft-noted legitimacy gap. While at this bottom level of the social order users are most likely to object to the implementation of a norm,<sup>44</sup> however, this objection requires substantial political mediation in order to reach the point in the process of norm generation where normative substance is re-negotiated. It follows that notably actors at the meso-level are most likely to develop normative ownership. Yet, at the same time, the meso-level is located at the place of social order where, given the diversity of the affected stakeholdership, intersubjective validity claims are expected to reflect a particularly high degree of cultural diversity. Accordingly, the potential for actual ownership to develop, remains to be empirically identified. It depends on whether or not access to contestation is warranted. To engage in a more systematic and detailed way with the trajectory of norm transfer, understood as a highly complex and interactive process that is conditioned by cultural diversity, political and legal pluralism and the absence of a liberal community in the global realm (Allott 2003, 309). All conditions enhance the weight that needs to be put on practices, in order to understand global normativity as constituted, yet negotiable. To examine how distinct effects of norms come into play, and are affected by practices of norm validation, **Table 2** charts norms in a three-fold way to include formal validation (through treaty making with reference to normative principles), social recognition (through rule-making in social interactive practices) and cultural validation (through interaction at the implementing stage), respectively.<sup>45</sup> To explore this potential the next section turns to the long neglected 'normativity' dimension of norms that is constituted by contestatory practices.

### **3: Contestatory Practices**

Following research that has demonstrated that the contestation of fundamental norms of governance contributed to re-/enact normative structures of meaning-in-use in distinct ways, pending on the everyday context from which the involved stakeholders inferred their cultural background experience, the following explores the norm-generative quality of contestatory practices. In doing so, it seeks to contribute to the well-elaborated constructivist literature that identified constitutive practices as the source of intersubjective validity early on. Thus, practices have been theorized as a source of isomorphism that explained the diffusion of

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<sup>44</sup> Consider, for example, the war like conditions that evolved with regard to the implementation of fishing quotas in the 1995 Turbot War in the Northwest Atlantic.

<sup>45</sup> For these terms, compare Wiener 2008, 2014

norms as well as compliance with norms. The leading argument rested on the empirically demonstrated taken-for-grantedness that enabled the social recognition of norms that were perceived as appropriate.<sup>46</sup> For example, while constructivists have explained international actors' disposition to follow norms with reference to their "prescriptive force" (Kratochwil 1984), it has also been demonstrated that this prescriptive force has limited power across societal boundaries that often imply a lacking "fit" (Börzel and Risse 2000). And, in situations where social recognition did not translate into rule-following communicative action was considered the tipping-point towards obtaining compliance (Risse 2000) when seeking to explain norm diffusion and compliance with norms (Solingen and Börzel 2014). Somewhere along the line, however, the social constructivist research programme has settled in on emphasising normalcy rather than normativity, thus tipping the balance towards behavioural case studies.

Two notions of practice reflect the potential diversity of sources underlying and, at the same time, conditioning access to intersubjective validity claims. The first notion focuses on cultural practices that are at the centre of a "culturalist approach"<sup>47</sup>. It defines culture as "a presupposed layer of symbolic and meaningful rules" and argue that "(I)nstead of understanding social order as the coordination of actions through norms and rules, culturalist approaches focus on understanding what makes actors believe that the world is ordered in the first place, and therefore renders them capable of acting within it."<sup>48</sup> Rather than pursuing the constructivist line of norms research, they bank on "collectively shared orders of knowledge" understanding "social order as a product of collectively shared knowledge" (Bueger and Gadinger 2015, 3). The second notion considers the practices of constitution-making that have remained "hidden" under the map of modernity that established a preference for organisational practices as opposed to customary practices.<sup>49</sup> To make the latter visible, James Tully proposed a dual approach to constitutionalism including the interplay between regulatory and cultural practices. By accounting for the interrelation between both, it has become possible to shed light on injustice and the lack of legitimacy in governance relations. Subsequently, critical norms research in IR has begun to "account" for cultural practices in the process of re-/enacting structures of normative meaning-in-use. This literature draws on ethno-methodology, critical philosophy and legal anthropology.<sup>50</sup> This practice oriented approach is based on the central assumption that the quality of norms is deeply affected by both the cultural practices that are constitutive for them and the regulatory practices that settle the way they work. If this assumption holds, it is necessary to go beyond the constitutive practices that generate normalcy (measured with reference to social recognition, and the logic of appropriateness) and embrace the contestatory practices that constitute 'normativity' (measured with reference to the principle of contestedness) in to norms research. Following critical norms research it holds that, if contestation is defined as the – spontaneous or strategic – objection to norms or rules of governance, then it is always potentially norm-generative.<sup>51</sup>

\*\*Rather than disregarding 'norm-based theories', the paper \*\*suggests pursuing both the normalcy assumption (*i.e.* social interaction is always a constitutive practice) and the normativity assumption (*i.e.* social interaction is also a contestatory practice). And, in order to do so, it works with a "bifocal form of critical analysis" in order to comprehend how normative

<sup>46</sup> March and Olsen 1989, 1998; Finnemore and Sikkink 1998; Price 2007

<sup>47</sup> Reckwitz 2002, cited by Bueger and Gadinger 2015, 3 and throughout

<sup>48</sup> Bueger and Gadinger 2015, 3, citing Reckwitz 2002

<sup>49</sup> Tully 1995; Owen 2012

<sup>50</sup> Milliken 1999; Hofius et al. 2014; Flemmer and Schilling-Vacaflor 2013; Merry 2012

<sup>51</sup> Tully 1995, 2000; Rouse 2007; Kornprobst 2012

concepts and policy practices change through contestatory practices.<sup>52</sup> This 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.” (Tully 2000, 471) The approach builds on insights from both empirical research on norms and their implementation, on the one hand, and from normative conceptions of practices that extend beyond “exhibited regularities”, on the other (Rouse 2007, 3). It centres on interactions about norms, rules and principles of governance that are performed under conditions of global governance. In the absence of political communities these interactions are carried out ‘unbound’ from, yet, informed by the political and legal norms of modern statehood. That is, while practices in national state contexts conform with “a situation in which every social practice of (a) community has as its generating response a performance which must be in accord with another social practice”<sup>53</sup>, practices that are performed under conditions of global governance, lack the legitimacy that is offered by reference to reliable matches. It follows that the concept of “social recognition” (Finnemore and Toope 2001) must be dealt with as the exception rather than the rule.

In the absence of social recognition, the probability of compliance under conditions of global governance depends on formal validation (at the treaty making stage) and cultural validation (at all stages involving individual actors). The interrelation between both the normativity assumption and the normalcy assumption are reflected by Rouse’s claim that a “normative conception of practices makes normativity irreducible but not inexplicable” (Rouse 2007, 4). That is, while stable over periods of time, constituted normalcy always remains subject to contestation. Accordingly, both normalcy and normativity must be paid conceptual attention. To fill the legitimacy gap in global governance, it matters therefore whether and if so, when, diverse state-plus actorship is able to develop political agency that has access to regular contestation as citizen-agents who work within and through governance relations (Tully 2008). By placing these struggles at distinct levels of social order it becomes possible to engage in reconstructive research that addresses the interplay between normative and empirical research (see **Table 3**).

### **Table 3: Access to Contestation? A Bifocal Perspective on the Legitimacy Gap**

#### **(About here)**

This bifocal approach allows for addressing the way norms work in international relations (*i.e.* drawing on everyday practices of norm implementation at distinct stages) by taking account the conditions that qualify access to the negotiation of normativity at distinct levels of social order (*i.e.* identifying ideal types of normative agency such as masters, owners and users of norms). At each of these levels, particular norms reflect the constitutional purpose, social experience and individual expectation of a plural set of global governance actors. This set of global actors, the state-plus actorship, is only bestowed with agency if and when it is possible to evoke their potential citizen-agency. The latter enables state-plus actors to engage in struggle about and within the governance relations the encounter themselves in and gain access to the legitimacy gap on the meso-level of social order. Taking this cue from public philosophy, it is

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<sup>52</sup> So far, the bifocal approach has been mainly applied by studies in Public Philosophy, in Gender Studies and in Organisational Management; see, for example, De Fries (2012)

<sup>53</sup> Brandom 1994, 189-90; cited in Rouse 2007, 3

held that rather than pursuing the civil right of contestatory practices in order to protect citizens from power and maintain freedom from domination (Pettit 1997), the concept of access to regular contestation envisages contestatory practices as the civic freedom that enables citizens' empowerment through "continuing contestation and negotiation by those subject to (governance relations, AUTHOR)" (Tully 2008, 4). The latter offers an important handle for research that seeks to identify "sites of contestation" (Benhabib 2007) under conditions of diversity, which remain to be explored by global governance studies. The task of filling the legitimacy gap at the meso-level then depends on sector-specific strategies that enable the access to regular contestation for involved stakeholders.

The underlying concept of exploring the potential to develop citizen agency at the meso-level of social order reflects the equi-primordially of the principles democratic governance and civic freedom. Both are central for the "transition from constitutional democracy (where the constitution is conceived as founding and standing behind democratic activity) to democratic constitutionalism (where the constitution and the democratic negotiation of it are conceived as equally basic)" (Tully 2008, 4). While the perception of the constitution as 'standing behind' democratic practice, reflects the context-free type 1 norm of political order theorising, the equi-primordially of democratic governance and civic freedom as a type 2 norm emphasise the need to constitute legitimacy through contestatory practices at the meso-level of social order. For in these struggles "the normativity of practices is expressed not by a determinate norm to which they are accountable but instead in the mutual accountability of their constitutive performances to issues and stakes whose definitive resolution is always prospective." (Rouse 2007, 6) By studying global citizens-agents engaging with governance relations, it becomes possible to reconstruct the ways in which the normative structure of meaning in-use is re-enacted.

The shift from state-bound to unbound negotiations of norms casts a quite distinct weight (and arguable, therefore political power) on agents that are involved in struggling within and through governance relations. As Tully has noted, in this context agency obtains a citizenship quality of sorts. Accordingly, these agents are to be conceptualised as "citizens" (Tully 2008). In fact, Tully advances a meta-concept of the global citizen by using "the term '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."<sup>54</sup> This citizen-agency is informed by and constitutive for legitimate governance wherever practiced. Accordingly the research question about the legitimacy gap is channelled towards asking where and under which conditions citizen-agency is both likely to and capable of normative practice. The access to regular contestation is therefore key. How to establish access to regular contestation for stakeholders, is therefore the leading research question for further research. While in view with the limited scope of this theory-guided argumentation, the paper will refrain from exploring distinct case studies, the following section will, however, offer possible steps towards the research operationalisation with empirical work in view.

#### **4: Bringing Normativity Back In**

To situate the legitimacy gap at levels of social order and identify possible sites where access to contestation stands to be established, this final section puts the two assumptions of constituted normalcy and contested normativity into place. The effect of contestatory practice therefore depends on who is involved and where contestation takes place. Any agent with

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<sup>54</sup> Tully 2008, 3; see also Tully 2014

access to all positions on the cycle maintains a comparative advantage to others who do not. It is argued that, given the intersubjectivity condition (norms entail per se social quality) and the normativity claim (the meaning of norms is contested) norm implementation may be carried out as a matter of 'habit' (March and Olsen 1989), however, it is not carried out by normative 'dupes.'<sup>55</sup> Whether or not contestatory practices kick in depends on where and how it is practiced for it is activated only if and when actors are enabled (or, morally entitled) to develop political agency through the right of access to regular contestation. This access – which ought to be established in principle – is the basic condition for active engagement in negotiating normativity.

To that end, the following maps the interplay between both on three charts. The first chart entails the "cycle of contestation" (**Figure 1**) to map distinct types of norm validation at three cycles of contestation. The second chart maps access to norm ownership with regard to the three distinct types of actors in global governance (**Table 4**). The third chart displays the projection of the first two charts onto each other (**Table 5**). The chart displayed by the cyclical model allows for a number of evaluative steps in order to identify the expected degree of contestation. It enables researchers to understand and explain contestatory practice with reference to normative indicators. Based on this evaluation it is possible to identify first, the involved agents and the stage of norm implementation they encounter themselves with regard to a specific given norm, and secondly, the likelihood of norm acceptance. Both allow for the third step of developing potential solutions in cases where contestatory practices are likely to spark considerable political conflict. The model presents three ideal typical situations that indicate whether the potential for contestation is expected to be high or low. These situations include the formal validity, social recognition and cultural validation of a norm. In addition, the cycle of contestation assigns three distinct stages of norm implementation (such as constituting, referring and implementing) to three types of agents (such as masters, owners and users).

### **Figure 1: The Cycle of Contestation**

#### **(About here)**

The positions on the cycle are not fixed. The metaphor allows for an imaginary 'spinning of the wheel' so as to be able to change the sites where the normative structure of meaning-in-use is re-/enacted. By moving site and agency through circular spin, it becomes possible to envisage changes with regard to the stage of norm implementation (*x-axis*), on the one hand, and the position on the cycle of contestation (*y-axis*), on the other. Thus, the distinct capabilities of intersubjective validation for the involved agency can be identified: Formal validation is most likely to take place within a context qualified by formal institutions such as, for example, committees of international organisations, treaty negotiations and so on that involve encounters between government representatives and/or diplomats. The result of formal validation is most likely to be a treaty or any type of formal agreement. At this stage negotiations will most likely focus on fundamental norms including a relatively broad, albeit little specified, moral and ethical reach. Second, social recognition is expected to occur in the context of well-established social groups. In this context informal institutions such as habits

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<sup>55</sup> Compare Michael Barnett's reference to the absence of culture in international relations, see: Barnett 2003.



and routinized practices qualify the interrelation between individuals. These may include distinct types of entities that have been constituted as stable groups through social interaction. The result of social recognition is most likely to be expressed through habitual norm-following behaviour. Accordingly, the probability of contestation is low, because group members have been socialised into accepting the normalcy of the norm. Notably, however, as indicated above, due to the diversity in background experience in (non-iterated) inter-national interactions, under conditions of global governance social recognition is the exception rather than the rule. Third, cultural validation is possible at all sites where interaction among individuals takes place. In international relations – understood as encounters among agents with distinct national roots – this distinct normative baggage is therefore brought to bear across political borders or socio-cultural boundaries. At this cycle position the institutional context is the most flexible among the three possible ideal typical categories of intersubjective validation.

Notably, the potential for citizen agency that is both capable of and enabled to engage in contestatory practices, depends on the roles assigned to them. **Table 4** presents three ideal typical actor categories that are derived from the literature in order to illustrate this claim. For example, the *first* category defines the masters of a treaty who are entitled to confirm the legitimacy of a treaty's substantive normative claim with their signature. The ideal typical masters engage in contestatory practices when drafting treaties, agreements or international conventions. The *second* category is the ideal-typical – yet largely invisible – norm owners. This category represents the potential stakeholders who refer to mid-range organising principles in their day-to-day negotiation of the ground rules of specific norms relevant to a global governance sector. While the norm owners have, so far, been less central to IR<sup>56</sup>, it has been a central interest of social and public philosophers. The *third* category presents the ideal-typical norm-users who are expected to implement the norm on the ground as the designated norm followers. The research question that follows is: Under which conditions do the involved actors obtain agency that enables them to develop ownership? The following **Table 4** displays options to develop ownership based on access to contestatory practice that is available to masters, stake-holders and users, respectively. Given the three stages of norm implementation (displayed on the *x-axis*), on the one hand, and the three levels of social order (displayed on the *y-axis*), on the other, indicate whether or not access to contestatory practices at the meso-level is possible in principle.

**Table 4: The Norm Ownership Model: Access to Contestatory Practice?**

**(About here)**

Given the settled substance of norms at the implementing stage that leaves actors to object to norm implementation rather than engaging in contestation, the legitimacy gap is predominantly conditioned by the political opportunity structure that conditions access in quadrants I, II, III and IV, respectively. By definition non-state stakeholders are excluded from contestations at the macro-level. In turn, masters have full access to contestation at this level. At the meso-level, masters do have access (consider e.g. the literature on legal regimes) while access to stakeholders remains limited pending on claims to stakeholdership and political institutions to facilitate its realisation. As **Figure 1** indicates, norm ownership at the meso-level is unlikely to evolve without specific strategic innovation (e.g. institutional change establishing

<sup>56</sup> Compare however, Cohen 2004, 2008; as well as Park and Vetterlein 2010

'pathways' for access). Given the three ideal typical actor models at distinct levels of social order, it is obvious that an overlap of mastership, ownership and followership of a norm will generate the highest compliance rates. Yet, in global governance settings, the occurrence of such overlap cannot be taken as a given. As the multiple breaches with the norms of international law have demonstrated, the likelihood for situations of contested compliance is much higher than anticipated by early global governance research. The image of the cycle of contestation demonstrates the difficulty in obtaining a working match between the positions on the cycle of contestation and the location in the global governance setting that allows for the development of norm ownership on the meso-level. This is documented by the optimal site for stakeholders to negotiate normativity (*i.e.* the ground rules of sectoral governance) that is located at the meso-level of social order. To visualise the legitimacy gap in global governance and the challenge of filling it, the following overlay projects both as a two layers of the global social order (**Table 5**).

### **Table 5: Allocating Pathways Towards Contestation**

#### **(About here)**

The setting that emerges from the projection of both models onto each other demonstrates that the legitimacy gap in global governance is likely to remain, unless contestatory practices are strategically re-allocated so as to warrant stakeholders' access to "regular contestation" (Wiener 2014, 63ff). It turns out that the overlay of both models helps understanding how distinct positions of the involved actors brought normative perspectives to bear that were not shared by all participating actors. As frequent debates of and breach with the norms of international law have demonstrated, contested compliance is more likely than the reverse situation. The overlay of the two models facilitates a more systematic view on the interplay of norms and normativity in global governance in order to generate more data about conflict and legitimacy based on empirical reconstructions of instances in which norms are contested within a specific sector of global governance such as for example fisheries governance, security governance or economic governance.

Given the complex trajectory of norm transfer and the threat of emerging legitimacy gaps, global governance research benefits from examining both constitutive and contestatory practices. For transborder norm transfer is – upon first contact - likely to encounter distinct (*i.e.* diverse and conflicting) normative values that bear sociocultural contingencies instead of deriving assumptions from a core of shared fundamental norms, in order to pre-empt and handle normative conflict. While the mismatch of these contingencies has been well accounted for by constructivist research on norms, they remain to be addressed in a more systematic manner in order to identify strategies to fill that gap. For example, if it were possible to distinguish sector specific opportunity structures,<sup>57</sup> it would be possible to develop new pathways in order to establish regular access to contestation. Thus stakeholders would become able to negotiate normativity under conditions of diversity. It is argued that, first, if global governance beyond the state entails the characteristic of unbound core elements of modern state building, it follows, secondly, that these elements carry a multiple-layered normative substance. That is, they consist of both the normative substance that once was constitutive for

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<sup>57</sup> Compare Sidney Tarrow's pioneering work on political opportunity structures in order to identify the conditions for success of new social movement activities (Tarrow 1989).

national states, on the one hand, and the re-enacted normative substance that is re-constituted through social interaction in the context of global governance, on the other.<sup>58</sup> Given the decline of state authority and the rise in norm transfer, global governance processes depend on these multiple-layers of normative substance as well as the diverse actorship that re-enacts this substance at distinct stages of norm implementation (such as constituting, referring or using norms). In light of these conditions of global governance, the challenge of filling the legitimacy gap depends on the actors who are involved in the re-/constitution of normativity in governance relations and the conditions for these actors to develop political *agency*.<sup>59</sup>

### Conclusion

This paper's discussion of intersubjective validity claims brought the interplay between normalcy and normativity assumptions of norms research to bear with reference to practice-oriented approaches. While the emergence of new interdisciplinary fields such as International Political Theory or Public Philosophy has expanded research in international relations theories that does bring normative theory to bear for example in the field of norms research, we know little about how normative and empirical research stand to be evaluated so that the research results might be applied by other researchers or used to formulate propositions for policy or political change. Generally, bifocal research projects raise normative questions and then conduct empirical research in order to (1) probe the societal, political or cultural impact of these questions; (2) revise normative assumptions; (3) reformulate theoretical approaches; and (4) conceptualise new policies. To that end, researchers resort to insights from critical philosophical arguments about specific societal problems (such as equality, justice, the rule of law and so on) on the one hand, and specific research methodologies in order to generate empirical case studies drawing on small to large scale data sets, or actually generating data sets, on the other.

Rather than discarding norm-based research, the paper's bifocal approach illustrated the value-added with reference to the often relatively isolated progress of the advanced literatures on norms and normativity in (global) governance theories. The argument centred on understanding contestatory practices as both a source of conflict and a condition for legitimacy. From this background, the paper allocated the legitimacy gap at the meso-level of social order, and then pointed to the challenge of filling the gap. The underlying research assumption held that, while it is possible to apply contestatory practices in order to fill legitimacy gaps in selected sectors of global governance, the success of this option depends on whether and how access to regular contestation is established for all stakeholders. The research design to meet the challenge consists in mapping contestatory practices in order to be able to shape institutional pathways to fill the gap. Two conceptual moves were proposed. The first consisted in drawing on social constructivist literature that emphasises the 'social' as the meta-reference for global governance. And the second brought in insights from public philosophy in order to theorise agency in governance relations based on the concept of contestatory practices which work within and through governance relations. It was argued that the value-added of the

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<sup>58</sup> Compare for these developments of constitutive practices in international relations theories the recent turns to practice theory as well as relatedly the turn to sociology of knowledge approaches which have been generated most prominently by contributions in the fields of public diplomacy, see for example Adler-Nissen 2014; Sending et al. 2015; for the sociology of knowledge approaches see in particular Hamati-Ataya 2014 and Adler-Nissen and Kropp 2015.

<sup>59</sup> As Rouse notes, agency develops through practice: „Our participation in those practices enables us to become the agents we are through our mutual accountability to the possibilities those practices make available and to what is thereby at stake for us in how we respond to those possibilities.“ (Rouse 2007, 8)

bifocal approach lay in bringing the respective findings of normative and empirical to bear in order to examine the interplay between norms and normativity.

The proposed research design allows for a focus on new pathways towards the meso-level in order to fill the legitimacy gap in global governance. This is achieved, for example, by identifying the opportunity structure that enables and/or constrains the emergence of political agency e.g. with regard to specific institutional and/or organisation features on the one hand, and with regard to principles features, on the other. Both help identifying change that is required in order to enhance the goal of access to regular contestation for stakeholders. The following summarises the preliminary insights gained from spelling out a bifocal approach to international relations by way of three conclusive notes for further research: The *first* holds that, while fundamental norms are legitimate to the masters of a treaty, there is no guarantee why users (such as the public, parties and so on) should agree. In stable communities or groups social recognition facilitates norm following. Under conditions of inter-nationality (*i.e.* enhanced multiple border crossings) social recognition fails. The *second* finds that the legitimacy of fundamental norms of global governance depends on the users' respective and cultural background experience. The higher the opportunity for regular access to contestation, the higher the chance to develop normative ownership at the meso-level of social order. And the *third* raises the following points for subsequent research: Taking into account the first two conclusions, further research would benefit from addressing the conditions of developing global citizen-agency based on norm ownership. For it is the ground rules (organising principles) at the meso-level that are required to fill the legitimacy gap.

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## ANNEX: Tables and Figures

**Table 1: The Legitimacy Gap in Global Governance**

Type	Actor	Social Order
<b>Fundamental Norms</b> (Type 1)	States & representatives	Macro-Level
<b>Legitimacy GAP</b>	Stake-holders (State-plus)	Meso-Level
<b>Standardised Procedures</b> (Type 3)	Individuals (citizens, corporations, etc.)	Micro-Level

**Table 2: Norm Types, Contestation, and the Legitimacy Gap**

Social Order		Agency	Contestation	Norm-Type	Legitimizing Practice
Macro-level		Masters	Low	Fundamental (type 1)	Formal validation
Meso-level	<b>GAP</b>	Owners	Regular	Organising principle (type 2)	Social recognition
Micro-level		Users	High	Standardised procedure (type 3)	Cultural validation

Source: Adaptation from various sources of norms research (Wiener 2008; Park and Vetterlein 2010)

**Table 3: Access to Contestation? A Bifocal Perspective on the Legitimacy Gap**

Actors	Social Order	Constitutive Practice	Contestatory Practice
States (and their representatives)	Macro-Level	Yes: constitutive practice	Yes: contestatory practice
Stake-holders (State-plus)	Meso-Level	<b>GAP</b>	Yes: contestatory practice
Individuals (citizens, corporations, etc.)	Micro-Level	Yes: constitutive practice	

**Table 4: The Norm Ownership Model: Access to Contestatory Practice?**

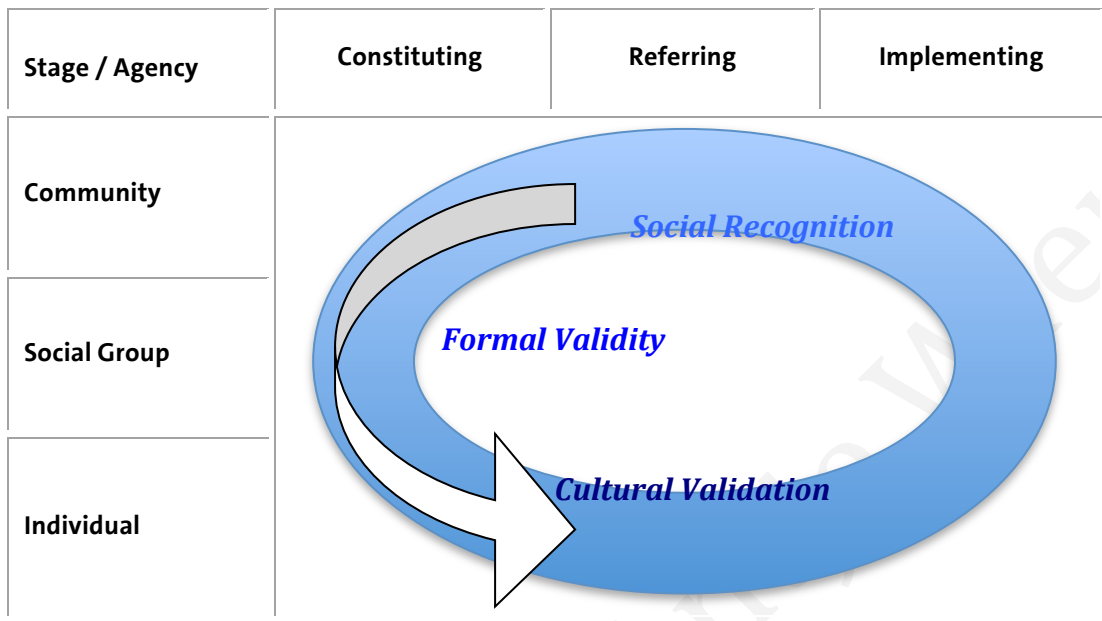
Social Order / Norm Implementation	Masters / Constituting	Stake-Holders / Referring	Users / Implementing	Moral Reach of Norm
Macro-Level (Type 1)	Yes <i>Q I</i>	No <i>Q II</i>	No	Broad
Meso-Level (Type 2)	Yes <i>Q IV</i>	Depends on opportunity structure <i>Q III</i>	No	Medium
Micro-Level (Type 3)	No	No	No	Narrow

**Table 5: Allocating Pathways Towards Contestation**

Social Order / Norm Implementation	Masters / Constituting	Stakeholders / Referring	Users / Implementing
Macro-Level	Yes <i>Q I</i>	No <i>Q II</i>	No access to contestation
Meso-Level	Yes <i>Q IV</i>	<b>LEGITIMACY GAP Pathways?</b> <i>Q III</i>	No access to contestation
Micro-Level	No access to contestation	No access to contestation	No access to contestation

Source: Adaptation from Figure 1 and Table 3

Figure 1: The Cycle of Contestation



Source: Wiener 2014, 36; Figure 2.1