

Chapter 1

Introduction: Contestation as a Norm-Generative Social Practice

Abstract The introductory chapter presents the argument and the organisation of the book. It begins by distinguishing between contestation as a norm-generative social practice, which-pending on the environment-entails four different modes (arbitration, deliberation, contention and justification) on the one hand, and the principle of contestedness as a meta-organising principle of governance in the global realm, on the other. The principle of contestedness reflects the agreement that, in principle, the norms, rules and principles of governance are contested. They therefore require regular contestation in order to work. To that end, it is suggested to establish organising principles (type 2 norms) at an imagined intermediary level of governance. Thus, the legitimacy gap between fundamental norms (type 1) and standardised procedures (type 3 norms) is filled by access to regular contestation (as opposed to ad-hoc contestation) for all involved stakeholders. To develop the theory of contestation, the book undertakes critical investigations into international relations theories based on three thinking tools from public philosophy.

Keywords Contestation · Contestedness · Organising principles · Access · Regular contestation · Stakeholders · Thinking tools

Contestation is a social activity. While mostly expressed through language not all modes of contestation involve discourse *expressis verbis*. Thus, among the distinct modes of contestation, including justification, deliberation, arbitration or contention, especially the latter does not necessarily involve language. However, all modes of contestation exclude violent acts, which play a more central role in acts of dissidence. In turn, as a social practice contestation entails objection to specific issues that matter to people. In international relations contestation by and large involves the range of social practices, which discursively express disapproval of norms. Pending on the type of norm, ranging from fundamental norms to organising principles or standardised procedures, this disapproval is expressed differently, to be sure. The mode of contestation, that is the way contestation is displayed in practice, depends on the respective environment where contestation takes place (i.e. courts, regimes, societal or academic). Several discursive codes matter in this regard (i.e. formal, semi-formal or informal). Accordingly, four

modes of contestation can be distinguished with reference to the literatures in law, political science, political theory and political sociology, respectively. They include first, *arbitration* as the legal mode of contestation involves addressing and weighing the pros and cons of court related processes according to formal legal codes; second, *deliberation* as the political mode of contestation involves addressing rules and regulations with regard to transnational regimes according to semi-formal soft institutional codes; third, *justification* as a moral mode of contestation according to moral codes involves questioning principles of justice, and, fourth *contention* as the societal practice of contestation critically questions societal rules, regulations or procedures by engaging multiple codes in non-formal environments.¹

These different modes of contestation indicate that as an interactive social practice contestation may be performed either explicitly (by contention, objection, questioning or deliberation) or implicitly (through neglect, negation or disregard). As a *social activity* that involves discursive and critical engagement with norms of governance, whether voiced or voiceless, contestation is constitutive for social change, for it always involves a critical redress of the rules of the game (Tully 2002, 2008a, 2008b; Fierke 2010; Owen 2011). As a *normative critique* it involves an interest in either maintaining or changing the status quo whether through civil society actors' claims-making, the rejection of compliance criteria in international negotiations, the refusal to implement norms on the ground, spontaneous contestation or debating alternative interpretations of norms. To understand how contestation works as a practice that critically redresses different types of norms in international relations, this book develops a theory of contestation. To that end, it conducts critical investigations into International Relations theories for purposes of theory building. This endeavour is based on selected 'thinking tools,' which are derived from public philosophy.

This use of these thinking tools follows Anna Leander's suggestion to derive tools from social science theories in order to obtain a theoretical framework that is "useful" for conducting "empirical research" (Leander 2008: 12). By applying this approach the *theory of contestation* brings critical norms research to bear and contributes to international relations theory more generally. With that in mind, the following draws on social theory and public philosophy to provide the theoretical background, from which to carry out critical investigations about the way contestation is used in International Relations theories. More specifically, three thinking tools have been selected on the basis of three research assumptions, respectively. They include first, the assumption that norms research must by definition entail research on the normativity of norms. Accordingly, the

¹ For helpful discussions which led to identify these four modes of contestation I especially thank Markus Kotzur, Stefan Oeter, Peter Niesen, Mathias Albert and Jan Wilkens at the *Centre for Globalisation and Governance's* Research Area 4 at the University of Hamburg; as well as Christopher Daase, Nicole Deitelhoff, Klaus Schlichte, Thorsten Thiel and Lisbeth Zimmermann at a workshop on 'resistance' at the *Normative Orders* Cluster of Excellence at the University of Frankfurt/Main 2013.

normativity premise is addressed as thinking tool number one in [Chap. 2](#). The second assumption holds that international relations are located within a global context where formal political borders and invisible cultural boundaries do not necessarily overlap. Therefore, inter-national relations need to be also understood as inter-cultural relations. This assumption is discussed by the *diversity premise* as thinking tool number two in [Chap. 3](#). And the third assumption builds on the norm-generative power of contestation. This assumption is developed with reference to the concept of *cultural cosmopolitanism* as thinking tool number three in [Chap. 4](#). Each thinking tool will be introduced and elaborated in detail over the length of the book, so as to provide the conceptual stepping-stones towards the theory of contestation.

1.1 In a Nutshell

The *theory of contestation*² proposes to consider the principle of contestedness as a meta-organising principle of governance in the global realm. Organising principles are conceptualised as entailing an agreement to insert a space for consultation at an imagined intermediary level (between fundamental norms, on the one hand, and standardised procedures, on the other). The principle of contestedness reflects the global agreement that, in principle, the norms, rules and principles of governance are contested *and* that they therefore require regular contestation in order to work. For the legitimacy gap between fundamental norms and standardised procedures to be filled, therefore, access to regular contestation (as opposed to ad-hoc contestation) needs to be facilitated, in principle, for all involved stakeholders. The *theory of contestation* elaborates on this thesis over the following six chapters. It centrally focuses on norms as the legitimating elements of global governance. Notably, norms are not prioritised or valued according to their ‘legality’ (Brunnée and Toope 2010a, b) but according to the perception of their ‘legitimacy’ on part of norm-users (Jenkins 2008). To reflect this conflict between ‘legality’ and ‘legitimacy’ of norms (principles, rules and regulations), the theory of contestation refers to a typology of norms that reflects the degree to which norms are perceived as shared or contested, respectively (Wiener 2008 and [Table 3.1](#) in this book). The norm-users are defined by the broader category of ‘stakeholders.’ In functional deviation of the more common use of the concept in relation with the principle of corporate social responsibility which reflects a participatory and dialogical approach taken by corporations in reflection of new global business ethics (Senge 2013; Engle 2011), the concept is used here to include those who claim a legitimate interest in a policy. The norm-user or the designated norm-follower is thus conceptualised as proactive rather than reactive.

² Note that italics are used hereafter to indicate reference to the book, whereas use without italics indicates reference to the theory.

The main normative argument holds that as the organic substance of the “normative structure of meaning-in-use” (Milliken 1999: 231; Wiener 2004: 190) of any governance setting, norms represent the legitimating core of global governance. Given that norms entail a dual quality (i.e. they are both structuring and constructed) they must be contestable so as to both indicate potential legitimacy gaps and to overcome them. Whereas legitimacy gaps are indicated by empirical research, they are overcome by applying the principle of contestedness, which underlies the call for equal access to regular contestation for all involved stakeholders. The *theory of contestation* is intended to provide a manual of sorts to facilitate a starting point for more systematic and large-scale research that takes a bifocal—normative and empirical—approach to norms research in international relations. That is, it aims to move beyond empirical observations about how norms work (i.e. how given norms influence behaviour), and thereby address the more substantial normative question about whose norms count (i.e. who has access to contestation).

In this regard the principle of contestedness is introduced as a meta-organising principle of legitimate governance in the global realm. Contestedness thus reflects the central assumption that is common to the range of approaches to democratic constitutionalism, namely, that in principle, the norms, rules and principles of governance ought to be contestable at any time by those governed by them (Dahl 1971: 4; Habermas 1991; Tully 2002: 218; Forst 2007). While democratic constitutionalism has conceptualised the principle of contestedness as the citizens’ right to contestation vis-à-vis the state (Pettit 1997: 63), this book shifts the perspective beyond the boundaries of modern states and addresses the implementation of contestedness as a mega-organising principle of governance in the global realm. By conceptualising the social practice of contestation as both indicative and required in order to establish and maintain legitimacy in global governance the *theory of contestation* proposes a novel way of interrelating the *practice* of contestation with the *principle* of contestedness.

A typology of norms in international relations (Wiener 2008: 66) demonstrates how organising principles are ‘wedged’ in between fundamental norms at the meta-level and standardised procedures at the micro-level. Given their intermediate position, organising principles have been defined as *type 2* norms—with *type 1* and *type 3* norms at the more visible upper and lower levels (Wiener 2008: 66). While the literature often overlooks the importance of organising principles as a potential stabilising force of global governance and instead engages in rather exhaustive discussions of whether they qualify as a legal norm or not (consider, for example, the debate about the responsibility to protect, see for many Brunnée and Toope 2010b), the *theory of contestation* puts them right at the centre of the agenda of norms research. This central position is owed to the observation of a *gap* between generally agreed and well justified norms on the one hand, and relatively specific and often highly disputed rules and regulations, on the other. As Steven Bernstein rightly notes, “one way to think about contestation is ‘the gap between general rules and specific situations’” (Bernstein 2013: 138, citing Sandholtz 2008: 121; Hoffmann 2010: 10).

To address that gap and develop a suggestion of how to fill it, I advance a two-tiered argument: First, I develop a pluralist alternative to the community ontology which is shared by liberal approaches to international relations—including the practice turn literature and normative constitutionalists—that in one way or other aspire to mobilise community values to counter the democracy deficit of global governance. And second, I draw on norms research in international relations theories in order to pursue the normative challenge of how to fill the legitimacy gap that has emerged between widely respected fundamental norms, on the one hand, and highly contested standards and regulations, on the other. Following the central insight from public philosophy that contestedness both indicates and generates legitimacy, I argue that the legitimacy gap stands to be filled (rather than bridged or closed) based on the principle of contestedness, which warrants access to regular contestation for all involved stakeholders. Crucially, it follows from the bifocal approach that while contestedness is a normative meta-organising principle; its legitimation depends on how sector-based organising principles (such as, for example, the principle of equity, the principle of common but differentiated responsibility or the responsibility to protect) are derived through contingent circumstances in selected sectors of global governance.

The bifocal approach is necessary because notwithstanding common global governance institutions accompanied by transnational legal regimes (Buchanan and Keohane 2006; Zumbansen 2012), the normative structure of meaning of today's late-modern international society involves persistent regional and cultural diversities (Onuf 1994; Fierke 2005). Therefore, late-modern global governance requires access to contestation to be addressed under conditions of globalisation and internationality. With this in mind, the *theory of contestation* seeks to offer a principled approach to explore ways of warranting equal access to *regular contestation* for a multiplicity of agents. As noted above, this theoretical proposition is developed from the conceptualisation of legitimate governance which has been developed by the democratic constitutionalism literature, on the one hand, as well as empirical accounts of inter-national relations that suggest operating under the structural condition of diversity in the global realm, on the other. It expects 'inter-national' rather than 'transnational' interactions to be the relevant reference in the global realm and argues that the contestation of the norms, rules and principles of governance is the rule rather than the exception in international relations. The ongoing debate about the legality of norms vis-à-vis their legitimacy sustains the persisting challenge of establishing legitimate and just governance in the global realm.³ Norms research in international relations over the past three decades documents that point well. And, as I contend in this book, it reveals an angle on the legitimacy problem, which has potential for further large-scale research that combines normative and empirical research objectives. Thus, while in the 1980s, regime theories

³ Compare, for many, Bernstein and Pauly (2007), Brunnée and Toope (2010a), Byers (2002), De Búrca and Weiler (2012), De Búrca (2009), Dunoff and Pollack (2013), Forman and Mackie (2013), Forst (2012), Krisch (2012), Sands (2006) as well as Zürn et al. (2012).

have observed the convergence of interests, rules, norms and decisions in specific issue areas (Krasner 1983; Kratochwil and Ruggie 1986; Young 1991; Rittberger and Mayer 1993), and in the 1990s, social constructivists have confirmed the powerful intervening role of ‘taken for granted’ norms in international relations (Checkel 1998; Risse et al. 1999; Price and Reus-Smit 1998), the following decade has raised questions about the very normativity of these norms, thus raising a question about whether they hold in light of enhanced diversity and subsequently, contestation in the global realm. The book therefore elaborates on the concept of contestation as a political practice that both indicates and generates legitimacy in inter-national relations. Prior to developing the argument in detail, the remainder of this chapter defines the leading concepts including the distinctive use of ‘International Relations theories’, ‘international relations’ and ‘inter-national relations’ on the one hand, and the concept of contestation, on the other; and then presents the leading argument, approach and the organisation of the book.

1.2 Inter-National Relations: Theory, Field of Enquiry and Practice

For conceptual precision and following theoretical triangulation that makes interdisciplinary research on international relations possible, the following distinctions are applied forth-following and throughout: First, the concept of ‘International Relations theories’ (habitually abbreviated by the acronym ‘IR’ in the political science literature) is used exclusively for reference to the academic discipline of International Relations *theories*. That is, the concept is understood to comprise the range of theoretical approaches, which set the context or academic research that addresses international politics, global governance, and world society research.⁴ Second, the term ‘international relations’ is used in order to describe the *field of study*, which is addressed by both International Relations theorists and International Lawyers, respectively. In distinction from the concept of International Relations theories, ‘international relations’ are understood to comprise the sum of all relations between states or nations, which are located outside domestic contexts. In turn, the third concept of ‘inter-national relations’ depicts the very *interaction* between agents of different national roots (i.e. including the entire range of agents from individual actors via non-governmental organisations, regimes and international organisations to states). The concept of inter-national relations has been introduced to distinguish the practice (i.e. the actual moment of mutual engagement on the ground) from the academic pursuit of theorising international relations. Notably the concept of inter-national relations as practice is used in the literal and descriptive sense of ‘action’ (see Wenger 1998; Kratochwil 2007). Considering that the status of

⁴ For some of the leading textbooks see Brown and Ainley (2005), Burchill et al. (2009), Carlsnaes, Risse and Simmons (2002), Diez et al. (2011), Dunne et al. (2010).

the concept of ‘practice’ is both central to the theory of contestation advanced by this book, and highly contested among international relations theorists, the following chapters will dedicate some attention to the concept.⁵ Despite enhanced globalisation, inter-national relations are on the rise rather than on the decline in 21st century global politics. Therefore, the inter-nationality condition as a constraint for legitimate global governance prevails. This matters especially for the theory of contestation and the relevant modes of contestation.

1.3 Contestation

The *theory of contestation* comprises four main features: First, it includes three types of norms (i.e. fundamental norms, organising principles and standardised procedures); second, four modes of contestation (i.e. arbitration, deliberation, contention and justification); third, three stages of norm implementation (i.e. constituting, referring, implementing); and fourth, three segments on the cycle of norm validation (i.e. formal validation, social recognition, cultural validation). It is suggested that based on these four features empirical research is equipped to identify legitimacy gaps in any selected policy sector of global governance. Each of the features will be developed in detail in the following chapters. The theory of contestation is developed with a focus on global governance as the widest realm of a plurality of normative orders, and with the goal to apply the theory to selected sectors of governance more specifically. To illustrate its application the book explores three such sectors (i.e. security governance, climate governance and fisheries governance).

Probably the most common perception of contestation, albeit not the most cited one, was introduced by Walter Bryce Gallie in his seminal article on “essentially contested concepts”, which argued that the meaning of concepts differs according to what a concept does on the user’s “behalf” and according to a user’s “interpretation” (Gallie 1956: 168). Without going into much more detail about Gallie’s notion of ‘contested concepts’ and its perception across the social sciences, two insights stand out for the theory of contestation as a framework for research on governance in the global realm: First, principles are as powerful as perceived by their addressees (as with the example of Gallie’s contested concepts); second, perception maintains or changes the meaning of fundamental principles pending on context. It follows that routinized meanings-in-use of universal concepts need to be taken into account, when assessing the role and impact of universal principles.

⁵ Compare, for example, the contributions to Adler and Pouliot (2011) who focus and elaborate the “practice turn” in International Relations theories. While Adler and Pouliot as well as Sending work with the “ontology of practice” understood as “competent performance”, other contributors warn against this conceptualisation as over-simplifying and cutting out analytical complexity (compare Adler and Pouliot (2011), Bially Mattern (2011), Duvall and Chowdhury (2011), Kratochwil (2012), Sending and Neumann (2011)).

In this critical sense, contestation has generated a range of studies that either began with the observation of a specific contested concept or with the notion of critical practices (see for many Tamanaha 2004; Loader and Walker 2007). To assess the contingent meaning of the respective concepts this research applied a bifocal approach combining normative and empirical research based on the method of “retrieval” which proceeded by retaining the concept from its contested context and subsequently re-approached the concept’s meaning through critical engagement with its “own motivating ideal.”⁶ The present critical investigation into international relations theories about the concept of contestation applies this method.

As indicated with reference to four modes of contestation above, the concept of contestation has been used across the board of academic disciplines. For example lawyers refer to contestation to depict the practice of weighing arguments in the process of jurisprudence (Lessig 1996 and critically Brunnée and Toope 2010a). In turn, social scientists refer to contestation to indicate the struggle of social forces over power in the 19th and 20th centuries (Hanagan 1999; Imig and Tarrow 2001; Tarrow et al. 2001). And critical theorists’ contestation involves active engagement with public debate about philosophical assumptions (Benhabib et al. 1995; Sen 2009). The decision to draw on Tully’s critical concept of contestation rather than, for example, on Pettit’s republican concept of contestability (Pettit 1997) has been made precisely because of Tully’s practice-based approach. That is, Tully is interested in the freedom to participate and engage with norms, defining contestation as a critical practice with the purpose of participating in the very process of negotiating normativity. By contrast, Pettit is motivated by the objective of establishing freedom from the institutions of the state and government. Tully’s take on contestation is particularly crucial for the purpose of advancing critical constructivist research on norms, for his critical reception of the Kantian regulative ideal juxtaposes the latter with a critical ideal derived from contemporary multicultural challenges of democratic governance. Thus, while also advancing a cosmopolitan approach, Tully’s philosophical contestation insists on firmly bringing cultural practice back in order to democratise contemporary governance.⁷ And, crucially, according to this approach cultural experience, and the multiple identities generated thereby, are considered as equally foundational for generating substantial normative values and principles of governance as Kantian political practice. As Tully notes, since “citizens themselves are required to accord the appropriate mutual respect for each other’s respect worthy cultural differences [...], it follows that citizens must engage in this kind of intercultural and agonistic dialogue. Given the need to test the second assumption of cultural diversity in the

⁶ For this method see Loader and Walker (2007: 17, citing Taylor 1991: 72).

⁷ For the realisation of this claim, see also the project DEMCON: Consortium on Democratic Constitutionalism, directed by Jeremy Webber, at the University of Victoria’s departments of Law and Philosophy, Canada, founded in 2004, sponsored by Canada Research Chair in Law and Society and University of Victoria, details at: <http://www.law.uvic.ca/demcon/index.htm> (accessed 14 March 2014).

course of the dialogue, the dialogue is properly called a ‘*multilogue*’. Such a public multilogue can be thought of as a reformulation of Kant’s ideal of ‘public enlightenment’ in the face of *cultural diversity*.” (Tully 2008b: 39, emphasis added AW).

1.4 Argument and Approach

During the past decade the concept of contestation was used by international lawyers and political scientists alike, who called for more critical research on ‘compliance’ with global norms.⁸ For now, the use of the concept in International Relations theories as well as in International Law (compare especially Brunnée and Toope 2010a, but also Byers 2000) is recalled as the background to which this book’s critical investigations will speak. The concept’s application with regard to studies of international relations gained momentum when compliance with global norms was observed by lawyers and political scientists who noted “contested compliance” (Wiener 2004; Howse and Teitel 2010; Brosig 2012) on behalf of actors who were expected to comply with fundamental norms of international legal regimes, taken-for-granted norms in international relations and/or with norms or regulations of international organisations. Almost a decade later, the concept of contestation has become quite popular.⁹ And, its current remit and scope lead beyond the refusal to comply. While its function has mostly borne more contentious intent than the various deliberative practices drawn from Habermasian discourse theory (Müller 2004; Risse and Kleine 2010; Diez and Steans 2005), the increasing use of the concept in situations where anything from friendly deliberation to strategic contention may be implied, runs the risk of undermining its conceptual depth and, as it were, its analytical teeth. To counter the risk for the concept to lose analytical clarity due to unspecified use, this book undertakes a critical review of the concept regarding its use in International Relations theories. By doing so, it assesses the role and resonance of contestation as a concept rooted in public philosophy and brought into international relations theories. The book therefore draws on public philosophy in order to perform critical investigations into International Relations theories (Brown 1992). The decision to focus on the concept in a book-length treatise has been motivated by a concern about “speculative” theories (Brown 1992) that are often compiled in a magpie fashion, i.e. picking attractive bits from other theories and importing them into International Relations theories. This observation stems from the common practice of

⁸ Compare especially Deitelhoff and Zimmermann (2013), Howse and Teitel (2013), Howse (2012), Teitel (2013), Wiener and Schweltnus (2004), Wiener (2008, 2004); Zimmermann et al. (2013).

⁹ This popularity has come to the fore most notably when German political scientists began to adapt the English term ‘contestation’ into the German language, using “*Kontestation*” rather than the proper translations of “*Umstrittenheit*” or “*Hinterfragung*”.

incorporating social science theories into their field, thereby often de-coupling concepts from controversial debates within their root disciplines of political theory, philosophy or social science and putting them to use elsewhere.¹⁰

Taking into account the two respective theoretical and empirical pillars, it is proposed to work with a bifocal approach that conceptualises normativity and cultural diversity as linked through the very practice of inter-national relations. Accordingly it is argued that the *legitimacy gap* between generally accepted meta-norms on the one hand, and highly contested regulations at the micro-level, be filled by establishing access to regular contestation for involved stakeholders in specific sectors of global governance as an institutionalised routine to counter the potential conflict. This argument rests on the assumption that the legitimacy gap persists *despite* the mushrooming of global governance institutions, transnational legal regimes and global constitutionalisation, and that it is constituted through ongoing inter-national relations when nationally distinct cultural validations come into play. Achieving legitimate and just governance in international relations therefore depends on how the condition of inter-nationality can be addressed in the global realm. The key proposition of the theory of contestation consists in maintaining contestation and thereby bringing the legitimating force of this practice to bear. In addition to providing institutionally warranted access to regular contestation based on the principle of contestedness this proposition rests on the perception of contestation as a practice that is language-based and therefore constitutive for normativity. The argument is developed in more detail over the length of the book.

According to meta-theoretical frames as opposed to eclectic theorising, this book understands International Relations theories to be developing from as well as rooted in social science theories and public philosophy proper (as opposed to incorporating bits and pieces of social science theories into International Relations theories for specific purposes). Accordingly, it recalls the relevant theories and extends them for use in International Relations theories (compare Brown 1992; Albert 2003). The goal is to present and further theorise the concept of ‘contestation’ beyond the mere denotation of a social practice, in order to maintain and elaborate the concept’s immanent impact on social change. For as a political practice, contestation includes the power of defining the meaning-in-use of the norms that govern a political community. Access to contestation is therefore crucial for just and legitimate political order—whether within the constitutional boundaries of nation-states, or beyond. To make contestation viable for the latter, the leading argument consists in reclaiming the conceptual link between contestation and contestedness, which is set by democratic theory (Tully 2000) for international relations theories.

¹⁰ While this rather often reflects an implicit if strategic reference to ‘imported’ principles, a new debate about eclecticism versus meta-theories offers an important critical perspective on this practice (compare pro eclecticism Katzenstein and Sil (2011); for the argument against eclecticism which would support careful reference to conceptual debates in the root context, see Reus-Smit (2013)).

The investigations begin with a twofold query: First, *what is normative about norms?* This question has remained an open query following two decades of constructivist norms research in international relations. And second, it is asked *how to deal with diversity?* This is arguably the most challenging issue for theories of democracy and justice under the condition of inter-nationality. In essence these two questions signify the debate about which role dialogue ought to play in establishing and maintaining just and legitimate political order. ‘Dialogue’ expressed through any type of peaceful interaction has a central role in political theories of democracy, peace and justice including Kant, Habermas, Forst and Tully among many others. Following the so-called fourth debate among “rationalists and reflectivists” (Keohane 1988; Waever 1996; Christiansen et al. 1999; Fierke and Jørgensen 2001) that shifted towards the constitutive impact of social ontologies, the impact of ‘dialogue’ has become widely discussed and methodologically refined in International Relations theories (see in particular Fierke 1998, 2010; Wendt 1999; Bjola and Kornprobst 2011). However, the impact of dialogue reaches beyond the consistent constructivist’s focus on “rule” change (Fierke 2010: 187). As Tully and others have convincingly argued, dialogue and more importantly still with reference to cultural diversity, “multilogue”, transport cultural experience (Owen 2007; Tully 2008a). It is therefore an important indicator for research that seeks to capture and shape normative change. To address this wider constitutive impact of language beyond rule change, then, dialogue remains to be more systematically assessed. To that end, the following chapters focus on contestation as a discursive form of social practice in International Relations theories. The book elaborates on the argument that diversity is here to stay, given that despite ongoing processes of globalisation and regional integration, cultural harmonisation in transnational arenas is likely to remain a rare occurrence. Therefore a more concise understanding of contestation as a way to voice difference of experience, expectation and opinion is crucial. Any work targeting the establishment of just and legitimate institutional and constitutional settings in the global realm therefore needs to understand how contestation works in practice and in theory. With this in mind, the following chapters first address the concept of contestation with regard to the two leading questions about normativity and then turn to elaborate on the application of these normative conditions by empirical research.

1.5 Organisation of the Book

The book’s critical investigation into international relations about the role and resonance of the concept of contestation seeks to achieve two objectives. First, it seeks to recapture the critical dimension of the concept of contestation as a dialogical practice that is constitutive for social change. To that end it develops an argument that calls for establishing access to regular contestation in international relations based on contestedness as an organising principle. Secondly, it aims to set

the grounds for an interdisciplinary research programme on just and legitimate global governance under conditions of diversity. The programme is based on the leading argument of the *theory of contestation*, which holds that contestation is both *indicative* for sector specific organising principles as norms at the intermediary level, and *required* to establish regular contestation at the referring stage in reflection of the meta-organising principle of contestedness in global governance, more generally. While the two functions will be detailed with reference to the four features of contestation over the length of the book, for now, it is helpful to keep in mind for research international relations, both in law and in political science, that contestation is specified by three conditions: First, given that as a social practice contestation is always carried out in context, it bears contingency with regard to place and time (Tilly 1975; Scott 1988; Jenson 1989). Second, given that as an interactive practice contestation requires at least two participating agents, it bears intersubjectivity (Kratochwil and Ruggie 1986). And third, given that contestation is generally directed towards norms (of whatever type), it is generated in relation with and hence of direct relevance for normative structures of meaning-in-use (Searle 1995: 44; Milliken 1999: 231; Wiener 2004; Bjola and Kornprobst 2011: 11; Giddens 1979). These three conditions of contestation are constitutive for the choice of three thinking tools, which serve as stepping-stones for the following critical investigation into international relations theories: the normativity premise, the diversity premise and cultural cosmopolitanism. The following section briefly introduces each of these thinking tools in turn, thereby indicating their *conceptional* roots in public philosophy.

Following this *first* introductory chapter, [Chap. 2](#) focuses on the normativity premise as the first of three thinking tools. It begins by raising a question about the normative meaning of norms, i.e. what is normative about norms. Drawing on the range of scholarly contributions, especially however not exclusively within the constructivist camp, it notes that while diverse interpretations of norms facilitate a novel and important empirical angle on the role and impact of norms and principles of international relations (Doty 1993; Weldes and Saco 1996; Milliken 1999; Reus-Smit 2001), their impact remains to be explored more systematically with regard to the normative underpinnings of global governance. The chapter then recalls how the concept of contestation in International Relations theory emerged in critical engagement with the compliance literature, especially by norms research that was inspired by the constructivist turn in international relations theories (Howse and Teitel 2010; Teitel 2013; Brosig 2012; Brunnée and Toope 2010a; Wiener 2004, 2008). Its specific use and purpose within the context of International Relations theories, was to facilitate a critical investigation as a scientific practice, which was ultimately spurred by Kratochwil's query of how "norms work" in international relations (Kratochwil 1984). In the process critical norms research scrutinised conventional constructivist approaches that were predominantly interested in the structural impact of norms on state behaviour, and which therefore considered contested compliance as a "lack of fit" that could, in principle, be overcome by using coercion (Börzel and Risse 2000; Schimmelfennig 2000; Checkel 2001). Different from this consequentialist interest in compliance,

critical norms research took contestation as an indicator of different background conditions. Rather than focusing on the lack of compliant behaviour with a norm, which was identified by a particular agreement, convention or treaty, this research was interested in diverse experience and expectations as potential causes for different understandings. Accordingly, it took instances of contested compliance as empirical indicators for situations that, if properly analysed, would offer a better understanding of the normative structures of meaning in-use in global governance. As a result, the *theory of contestation* argues, it is now possible to account for diversity in global governance. The argument is developed with reference to the three segments on the cycle of contestation as well as the three stages in the compliance process.

Chapter 3 focuses on the diversity premise as the second thinking tool. It draws on diversity claims following empirical accounts of diversity along the ethno-methodological dimension of indexicality (Garfinkel 1967), on the one hand, and normative arguments about culturally multiverse constitutional contexts (Tully 1995), on the other. This chapter refers to research on governance in the global realm as the terrain where the prospect of establishing and maintaining just and legitimate governance has been considered as the greatest challenge and hence most thoroughly imagined and contested by cosmopolitan philosophers ranging from Immanuel Kant to James Tully. It is argued that Tully's philosophical contestation of Kant's regulative ideal for a political order in Europe on cultural grounds, offers an important angle on the premise of maintaining diversity. The chapter's critical investigation into international relations theories applies the diversity premise to challenge the community ontology. While seldom related explicitly, this ontology is underlying both the 'practice turn' literature (Adler and Pouliot 2011) and normative global constitutionalism (Habermas 2011; Cohen 2012). Its impact comes to the fore as both seek to *overcome* the legitimacy deficit of global governance rather than *fill* the legitimacy gap. The subsequent claim that contestation is a norm-generative practice is especially innovative for international relations theories because it suggests relating the political contestation of norms back to prior cultural experience. **Chapter 3** elaborates on the normative claims of this critique with reference to the features of norm-types and segments on the cycle of norm validation. To that end, it draws both on Kant's regulative ideal and Tully's critical ideal (Tully 2008a, b).

Chapter 4 introduces the concept of cultural cosmopolitanism as the third thinking tool with a view to framing the theory of contestation. This thinking tool is developed with recourse to Tully's "public philosophy in a new key" (Tully 2008a, b). From this background, the application of this thinking tool towards a critical investigation into international relations theories is aimed to identify the interrelation between the practice of contestation and the principle of contestedness. This is done with reference to the feature of three types of norms and their respective degree of contestation (i.e. low, high and regular). Understood as a norm-generative practice contestation is considered as a *sine qua non* for legitimacy in any context of governance, including governance in the global realm. It is argued that to make full use of the concept 'regular' contestation ought to be established as a legitimacy

enhancing practice in the global realm. To that end, the *theory of contestation* takes Tully's development of a cultural ideal of democratic governance as the starting point for conducting this critical investigation into the role and resonance of 'contestation' in international relations theories, and thereby propose adapting the practice-based approach to government through civic freedom (Tully 2008a), which has been developed from the perspective of diversity within a national frame for International Relations theories.¹¹ This method mirrors Jutta Brunnée and Stephen Toope's theoretical move to develop their innovative "practice of legality" approach for "international interactive law" from Lon Fuller's national legal theory about law as reciprocal rather than hierarchical (Brunnée and Toope 2010a: 7, citing Fuller 1969). In sum, [Chap. 4](#) elaborates on the legitimacy gap that emerges between fundamental norms on the macro level and standardised procedures on the micro level. By drawing on Tully's cultural ideal this chapter works with 'cultural cosmopolitanism' as a thinking tool to demonstrate the normative effect of cultural practices in inter-national relations as individual experiences, rather than collective, cultural properties.

[Chapter 5](#) proposes that based on the principle of contestedness (as a meta-organising principle of global governance) access to regular contestation at the referring stage ought to be warranted. This stage is sector-specific and therefore requires empirical research for identification. To exemplify this process based on the three stages of norm implementation, this chapter identifies the referring stage with reference to sector-specific organising principles that are derived from processes of policy-making. This application follows the definition of contestation as both indicative and required for legitimacy. Accordingly, the legitimacy gap that is indicated by enhanced contestation (i.e. when the respective legal and social contexts do not provide for the social recognition which is required in order to accept a norm as appropriate and implement it according to the required regulations) as the 'space' where normative meanings are contested in International Relations theories. By including regular contestation within an institutional (and, pending on the degree of constitutionalisation in a specific context, the constitutional) setting, the potentially conflictive outcome of political contestation when performed either as spontaneous protest, or conducted as strategic intervention, may thus be 'tamed'.¹²

To demonstrate the value-added of this concept, the following [Chap. 6](#) turns to three explorative cases in which the relation between three types of norms is presented through the sector-specific narratives. The cases and the respective selection of norms that play a role at the three stages of norm compliance include security governance (civilian inviolability, responsibility to protect, non-intervention), climate governance (sustainability, common but differentiated responsibility,

¹¹ Note the use of the concept of 'governance' rather than 'global governance' so as to distinguish a pluralist from a modernist approach to governance in the global realm.

¹² For the notion of 'taming' power through institutions compare Peter Katzenstein's work on Germany within the European Union, see Katzenstein (1997).

emissions standards) and fisheries governance (sustainable fisheries, precautionary principle, fishing quotas).

The concluding [Chap. 7](#) summarises the book's objective to develop the theory of contestation by using three thinking tools, and thereby highlighting the inter-relation between contestation (as a norm-generative practice), on the one hand, and contestedness as a meta-organising principle of global governance, on the other. The chapter highlights the central claim of the *theory of contestation*, which holds that by understanding contestation as a critical discursive practice that is constitutive for normative change, a constructive contribution is made to the legitimacy 'deficit' debate, insofar, as it facilitates ways to allocate and establish regular contestation in selected sectors of global governance. It shows advances on innovative approach to theorising legitimate and just governance in the global realm under conditions of inter-nationality despite ongoing globalisation.