Chapter 2
The Normativity Premise: The Normative Power of Contestation

Abstract This chapter focuses on the normativity premise as the first of three thinking tools. It begins by raising a question about the normativity of norms. It notes that while diverse interpretations of norms facilitate a novel and important empirical angle on the role of norms in international relations, their impact remains to be explored more systematically with regard to the normative underpinnings of global governance. It then recalls how the concept of contestation in International Relations theories emerged through critical engagement with the compliance literature, especially by research inspired by the constructivist turn in international relations theories. The argument is developed with reference to the three segments on the cycle of contestation as well as the three stages of norm implementation.

The 'normativity premise' is introduced as the first of three thinking tools, which have been chosen as stepping-stones for the theory of contestation *from* the background of public philosophy *for* the advancement of International Relations theories. The focus on normativity reflects the concern about the risk of 'contestation' to loose theoretical 'teeth' as a concept of norms research as an unintended consequence of its mushrooming application for what turns out to be mainly descriptive purposes. I hold that the more the concept is used to merely describe deliberative engagement that remains normatively non-substantial, the more its analytical relevance is likely to become blurred. To counter this tendency the *theory of contestation* suggests a bifocal approach in proper reflection of the concept's constitutive and normative role. The intention is to re-establish the concept's leading role in the range of approaches under the umbrella of International Relations theories such as, especially global governance theories, global constitutionalism and international law, respectively. Each is briefly summarised in the following.

Global governance theories emerged in the 1990s and are, in their majority, interested in creating norms with the intention to control the effect of globalised movement of capital, finance and trade through policy mechanisms and international organisations. In turn, global constitutionalism addresses the normative substance and public legitimacy of constitutionalisation beyond the nation state. It has emerged as a new interdisciplinary field in the past decade and is defined as the interdisciplinary theoretical framework to study "unbound constitutionalisation", i.e. processes of constitutionalisation that unfold without being explicitly bound by states (Wiener and Oeter 2011; Wiener et al. 2012). Finally, theories of International Law have demonstrated a concern with the substantive change a norm undergoes over various stages of development from social via emergent legal norms to legal norms (Byers 2000; Toope 2003; Brunnée and Toope 2010a, b and critically; Finnemore 2000). Norms play a central role as constitutive, regulative and evaluative elements for each of these theories. While sociologically speaking they literally express 'normality' or 'taken for grantedness', and are therefore conceptualised as habitual rather than cognitive (Morris 1956; March and Olsen 1989; Price and Reus-Smit 1998), from a legal or philosophical perspective norms carry specific moral weight that establishes their legality through public deliberation (Toope 2003; Brunnée and Toope 2010a; Müller and Wunderlich 2013). And with regard to the constitution of political orders, norms are expected to justify, and therefore, enable public order and authority based on the basic principle of democratic constitutionalism, which holds that governance acquires legitimation through potential critical interventions by those governed by these norms (Pettit 1997; Zürn 2000; Tully 2002; Forst 2007, 2012). While the act of contesting norms within a *societal* context bears the risk of being excluded from the social group that considers these norms as appropriate, for they are 'theirs', contesting norms within a *legal* context e.g. through arbitration or by deliberation about procedural details such as, for example, which norm applies in case of competing legal orders, and how to apply them, or is a routine procedure which is considered as common and therefore appropriate (or 'normal') in jurisprudential procedures (on the rules of 'Treaty Law' compare Chayes and Chayes 1993). In turn, contesting norms within a *political* context involves formalised debating procedures, for example, in parliament or during public electoral debates, as well as public forms of struggle, which are considered appropriate within specific political orders. In all three contexts the 'work' of norms unfolds in appropriate ways, either habitually established or formalised by appropriate procedures.[1] In these contexts and the respective circumstances, the practice of referring to norms bears a degree of 'normality', that is of everyday routine, of which contestation is part. What this chapter seeks to demonstrate, however, is that while contestation may be considered a regular and appropriate practice, the effect of this practice (i.e. the normativity that is generated through it) differs considerably, pending on the respective choice of epistemology and ontology (Kratochwil and Ruggie 1986). The following sections therefore turn

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[1] For the question of how norms 'work' compare Kratochwil (1982: 686).

to the leading question of what is normative about norms, and explore this question with regard to the literature on norm research in International Relations theories.

2.1 What Is Normative About Norms?

Norms research in International Relations theories distinguishes two substantially distinct positions: For example, an epistemological position that derives norms for a community with a "given" identity (Katzenstein 1996: 5; Adler and Pouliot 2011) will read their meaning off a constitutive script. In turn, an epistemological standpoint that considers norms as intersubjectively constructed, will read the normative meaning off the practice of re/enacting norms (Kratochwil and Ruggie 1986; Wiener 2008, 2009; Wiener and Oeter 2011).[2] The former approach has been summarised as undertaking, perhaps unintentionally, an "ontologisation of norms", which take the substance of norms as given; in turn, the latter approach conceptualises norms as entailing a "dual quality" and, accordingly is interested in both the constructive and the structuring dimension of norms (Wiener 2007: 51; Holzscheiter 2011; Rosert 2012; Deitelhoff and Zimmermann 2013).[3] Importantly, ontological approaches are restricted to the choice of norm while critical approaches address normative meaning. Pending on the respective choice of epistemological position therefore, the practice of norm contestation can have two different effects. On the one hand, contestation may establish which norm is appropriate and how to implement it. On the other hand, contestation is understood as adding to the re-/construction of normative meaning. In the latter case, contestation may either generate changing normativity through critical approval or identify disapproval. All depends on how normative substance is perceived by the respective agents and with regard to each of the three segments that are part of a cycle of potential contestation (compare Table 2.1).

The three stages include, first, constituting norms by establishing formal validity by a political community (international society, community); second, referring to norms as an appropriate indicator of behaviour or a source of social obligation held by a group (regime, organisation or another type of social environment); and, third, implementing norms 'on the ground' (by individual norm-users including policy-makers, public servants, firms, corporations, parties or organisations). The three types of agency are distinguished according to both the segments in the cycle of norm validation and the respective stage of norm implementation (compare Fig. 2.1). The three stages indicate when contestation is possible *in principle*.

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[2] For epistemological standpoints and their relevance for analytical perspectives that allow for critical investigations into political science and later international relations, compare the feminist literature in the 1980s and 1990s, especially Sandra Harding (1986) as well as Joan Wallach Scott (1988), and for IR, especially Weber (1994), Whitworth (1989) and Zalewski (1996).

[3] This argument draws on Melucci's critical account of the 'ontologisation of social movements' (1988) and on Giddens' concept of 'structuration' (1979).

Table 2.1 Three segments of norms

Segments	Reference	Form
Formal validity	Official document	Law, law-like
Social recognition	Social group	Unwritten, law-like
Cultural validation	Individual experience	Socio-cultural, informal

These three segments are situated on the cycle of norm validation. They indicate the likelihood of contestation as opposed to the fixed combination of agency and segment at a given stage of norm implementation. Notably, at each stage one of three distinct segments of norms is predominantly addressed (i.e. formal validity, social recognition, and cultural validation) (Fig. 2.1).[4]

Each segment on the cycle operates in interaction with the other and with reference to a specific norm. The more an approach is in the position to account for potential contestation, the higher the likelihood to establish legitimate governance. To probe this assumption, the following reviews four major approaches to norms in international relations theories. By distinguishing four rather than two approaches (i.e. conventional vs. critical constructivism), the *theory of contestation* seeks to highlight the crucial importance of analytical standpoints. For example it makes a substantial difference whether norm-generative power is related to the practice of contestation itself (norm-generative power), or whether it is allocated at community level (community ontology). Most recently these standpoints have been advanced by a range of contributions that draw on the philosophy of language and straddle the boundaries of public philosophy, diplomacy and security studies (Fierke 2010; Bjola and Kornprobst 2011). They help clarifying the normativity premise based on their distinctive deontic understanding of practice. To discuss the four approaches with regard to the theory of contestation, each is assessed with regard to the normativity premise (compare Table 2.2). That is, they are compared according to their respective understanding of norms and allocation of normativity.

The distinction on the vertical axis considers the allocation of normativity as rooted either internally (i.e. plural and conceptually contestable) or externally (i.e. universal and normatively given). In turn, the distinction on the horizontal axis notes whether norms are approached from a 'community ontology' or from a 'diversity ontology'. From these cross-references to normativity and ontological preference four central distinctions are notable regarding the functions ascribed to norms: *First*, the conventional constructivist approach in the first quadrant derives the role and recognition of norms from their community environment and the respective normative order that guides that community. Accordingly, norms are

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[4] I thank Jim Tully for suggesting the cyclic approach to the three dimensions of normative meaning-in-use.
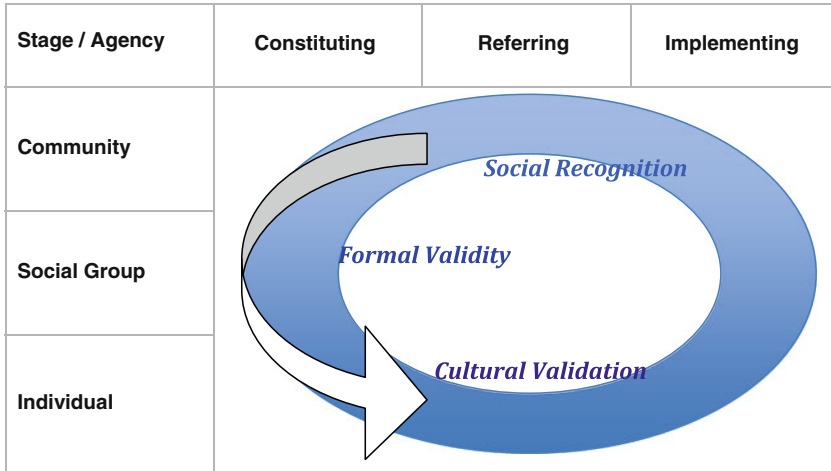
Stage / Agency	Constituting	Referring	Implementing
Community			
Social Group			
Individual			

Social Recognition

Formal Validity

Cultural Validation

Fig. 2.1 The cycle of contestation

Table 2.2 Two ontologies: community versus diversity

Perspective	Community ontology	Diversity ontology
State plus	(1) Conventional constructivist Norms *structure* state behaviour	(3) Regimes Norms *are the glue* of regimes
Global	(2) Global governance Norms *guide and control* multiple actors	(4) Critical/consistent constructivist Norms *form part of* the normative structure of meaning-in-use

considered as standards of behaviour in international relations (Q1). *Second*, the global governance approach in the second quadrant conceptualises norms as principles and rules of a given cosmopolitan order in which their role is to guide, monitor, control or steer governance (Q2). *Third*, regime theories consider norms as the glue of transnational regimes, which develop through interaction in the context of cross-border and transnational institutions and organisations (Q3). *Fourth*, critical and consistent constructivists consider norms as constituted through practice. Norms are understood as carriers of meaning-in-use, which is re-/enacted through social practice. Given that contestation is a discursive practice that critically engages norms, it is the main access point for contestation research (Q4). The distinction of these four approaches has been simplified on purpose so as to shed light on the normative power potentially allocated by each approach with reference to their respective concepts of community or diversity respective. This allocation matters for the normative effect of contestation as a language-based practice that generates change—arguably the most important indicator of the normativity premise. The four distinctions reveal where each approach ultimately

allocates normativity with regard to the cycle of norm validation (i.e. which segment matters, which type of actor may intervene and at which stage).

Accordingly the following scale of normativity (based on the insertion of regular contestation) materialises on a range between one (low) and four (highest): Normativity is externally allocated and norms are conceptualised as taken for granted from the standpoint of community ontology (Q1: conventional constructivist); normativity is internally allocated and norms are conceptualised in the same way (Q2: global governance); normativity is externally allocated but norms are understood from the stand-piont of diversity ontology (Q3: regimes); normativity is allocated internally and norms are understood in the same way (Q4: critical constructivist). It follows that approaches, which allocate normativity internally and consider norms as intersubjectively constructed provide the highest potential for contestation. In that case, the decision to establish access to 'regular' contestation with the purpose of establishing or maintaining legitimate and just governance in the global realm would be most plausible. Notably, this discussion of the normative roots of norms is about the larger question of legitimate governance as opposed to the purpose of explaining strategic decisions in the process of governance.[5] As Table 2.2 shows, whether implicitly or explicitly noted, each approach applies specific normative assumptions. The following elaborates on the respective functions attributed to norms. Thus it becomes possible to explore the normative roots of each approach and subsequently establish whether or not the normativity premise is sustained or absent.

(1) *Norms as Standards of Behaviour: Conventional Constructivism*

Conventional constructivists identified norms as intervening variables in international politics. While allowing for a better understanding of the effect of social group environments and identity on international decision-making this theoretical move has never challenged the role of the state as the most powerful agent in international relations theories (compare for example Wendt 1994, 2003). Accordingly, constructivist overviews have dubbed this approach the "conventional constructivist strand" (Fierke 2010). Based on an interest in explaining state behaviour with reference to regulative and constitutive norms (i.e. taken for grantedness), this research turned towards social indicators to explain commonalities in the behaviour of states (Finnemore 1996; Jepperson et al. 1996). It was first and foremost considered with explaining and/or understanding policy choices (for example about organisational design), political decisions (for example about membership or cooperation) or acknowledging a general acceptance of fundamental principles of international law (such as, for example human rights).

When constructivist empirical research was able to demonstrate that norms have an impact on how states behave in international relations, norms research became a respected trademark approach in International Relations theories. By

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[5] For these two essentially different takes on academic research compare Cox (1983).

drawing on organisational theory norms were sociologically defined as standards of behaviour (March and Olsen 1989, 1998; Powell and DiMaggio 1991; Finnemore and Sikkink 1998). And Peter Katzenstein and his colleagues convincingly showed that the socio-cultural environment of decision-making in international politics mattered even in the sector of security policy (Katzenstein 1996), thus sustaining the claim that as social facts, norms mattered coequally with material facts (Ruggie 1992), even in areas traditionally considered 'high politics' (Hoffmann 1986). Given this empirically probed impact, these sociological investigations about the impact of social facts in international relations considered norms as having an ontological status. This status entailed a stability assumption, which facilitated a novel perspective of the way norms worked beyond the boundaries of national states, and which mattered in particular for the booming human and fundamental rights literature in the 1990s (see for many Soysal 1994; Keck and Sikkink 1998; Clark et al. 1999; Friedman et al. 2005; Risse et al. 1999). This literature shed light on the effect of norms beyond orders, such as for example David Jacobson's research on "rights across borders" (Jacobson 1996). Given the focus on state behaviour and the ontologisation of norms, the only possible instance of norm contestation stands to occur at the implementation stage (compare Table 2.3). That is, apart from the outright rejection of norms according to the conventional constructivist approach, the intersubjective segment of contestation is not applicable.

This changed with Thomas Risse and others' research on the "power of human rights norms," which explored the way norms worked in both directions, from the outside into domestic polities and vice versa (Risse et al. 1999). By introducing this interrelation between what neo-realists have called "two images" of international relations, i.e. the international and the domestic (Waltz 1979), Risse and his group brought in the critical practice of "arguing" as a normative source of legitimating the politics of the United Nations community (Müller 1994, 2004; Risse 2000). While, in principle, arguing was defined in terms of Habermas's communicative action (i.e. a conversation in which actors engaged in the search of the most persuasive argument and were ready to accept that based on the opponents' shared conviction the better argument should 'win', see Habermas 1988a, b) by including strategic activities of 'blaming and shaming' (Liese 2006; Deitelhoff 2009), the critical dimension of arguing as a intersubjective dialogical practice was undermined. After all, blaming and shaming is conceptualised as a top-down practice, which accepts coercion as a legitimate way to 'convince' unwilling designated norm-followers (Risse et al. 1999). To recover the legitimating normative power of communicative interaction, more and more constructivists took to developing critical norms research more systematically.[6] The *theory of contestation* extends along that latter strand of constructivism.

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[6] For recent contributions see Deitelhoff and Zimmermann (2013), Müller and Wunderlich (2013); for early critical constructivists see the work of Fritz Kratochwil, Jutta Weldes, Jennifer Milliken, Anna Leander and Chris Reus-Smit.

To summarise, the interest in human rights started two decades of constructivist norms research in international relations theory in the 1980s. According to conventional constructivists the social recognition of norms was conceptualised as habitual rather than cognitive. That is, social recognition demonstrated a sense of appropriateness that was felt and shared based on experience within a social group. Norms thus triggered behaviour that was literally considered as 'normal'. This behaviour hence was distinguished by the "logic of appropriateness" as opposed to the neo-realist "logic of consequentialism" (March and Olsen 1989; Risse 2000). While taking into account transnational social movement organisation and non-state actors' increasingly important part in global conflicts (compare, for instance, Keck and Sikkink 1998; Benford 2011), the "logic of arguing," which introduced the specific emphasis on legitimacy, had little to say on the quality of the norms themselves. Subsequently, the normative aspect of norms remained under-researched, while state behaviour in relation with norms received the main attention from students of international relations. A decade on, the concept of contestation has become popular with international relations theorists including those of Habermasian descent.

(2) *Global Governance: Norms as Principles and Rules*

The second approach to norms has been developed within the framework of global governance theories that build on the observation of the phenomenon of 'governance without government' as a problem in international politics that stood to be addressed more systematically by international relations theories (Rosenau and Czempiel 1992). Albeit quite diverse, by and large, global governance theories refer to fundamental norms as principles and rules of global (as well as regional) governance, which are purposefully established in order to facilitate the principals' instruments for steering and controlling the agents' policy-making beyond the state.[7] Again, and in line with conventional constructivism (see Q1 in Table 2.2, above), global governance theories do not question the powerful position of states as the principal agents in any substantive—normative—way. While global governance theories include a normative dimension and seek to rescue the power of nation-states under conditions of globalisation and enhanced regime-building given increasingly powerful international organisations, the normative underpinning of the fundamental norms of global governance is not conceived as being subject to contestation but as being universally defined for members of a given community.

That is, normative meaning is not subject to contestation. Norms are ontologically defined as the fundamental principles and rules that enable governments to govern despite the absence of 'government' in the global realm. Norms work under the condition of anarchy despite organisational attempts to civilise

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[7] See for example Hooghe and Marks (1996), Jachtenfuchs (1997), Jachtenfuchs et al. (1996), Jachtenfuchs and Kohler-Koch (1996), Kohler-Koch (1995), Marks et al. (1996), Scharpf (1997), Slaughter (2004) and Zürn (2000).

international relations. The normative roots of global governance norms are therefore external to international relations theories. Normativity is only subject to deliberation among students of global governance in so far as organisational detail and compliance with norms are concerned by international law or politics. It is rooted in and derived from either communitarian or cosmopolitan political theory, respectively. Subsequently, debates among global governance theorists have increasingly become theoretical contestations of positions along "the communitarian/cosmopolitan divide" (Shapcott 2001: 30; Cochran 1999).[8]

(3)   *Regime Theories: Constitutive Norms Versus Normative Glue*

The observation of states complying with norms, rather than contesting them is among the most common perceptions of how norms work in international relations.[9] Accordingly, the powerful effect of norms in international relations is empirically indicated by observations about state behaviour. This empirical angle on norms reflects an epistemological approach to political science that allocates the motivation for scientific research in puzzles rather than ethics or values (compare King et al. 1994). Accordingly, the question of what motivates states to comply with norms under conditions of anarchy, i.e. in the absence of a government that could enforce compliance based on sanctions, does not come as a surprise. Conventional constructivists explain norm implementation with reference to the 'socialisation', understood as a process that socialises individuals *into* an existing group with a given identity, and assume that therefore social learning in international organisations generates appropriateness (Checkel 2000; Schimmelfennig 2000). If that did not suffice, blaming and shaming were considered the political instruments to enhance compliance through pressure or even coercion applied by advocacy groups (see the previous section). With regard to the potential of contestation as a process that generates and changes normativity, it is important to note that these conventional constructivist approaches work with the assumption that the fundamental norms that are at stake, for example, human rights, democracy and so on, are recognised as just and legitimate, given their status as leading principles in international treaties such as, for example the United Nations Charter. These fundamental norms obtain their legitimation through treaties that are agreed among member states of a given community. Most of them are enforceable through international law or equivalent bodies such as for example the appellate body of the World Trade Organisation.

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[8]   Some theorists without direct links to international relations theories do however seek to bring in contestations about normativity. For example, Seyla Benhabib's "jurisgenerative" approach to cosmopolitan norms of global governance includes "sites of contestation" where citizens interact within a federal context, see Benhabib (2007: 32).

[9]   Compare Harald Koh's reference to the observation of an international lawyer, which noted that, "almost all norms are followed by states almost all of the time" (see Henkin 1979: 47, cited by Koh 1997: 2599, and Koh 2006, see also Checkel 1998).

In turn, critical regime theories advanced a more encompassing role of norms 'in context' however. They consider norms as effectively providing a glue of sorts for regimes. As Kratochwil and Ruggie explained, in critical juxtaposition to Krasner's seminal definition of regimes as "implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner 1983: 1), this effect stems from the intersubjectivity condition, which assigns a cognitive dimension in addition to the habitual effect to norms (Kratochwil and Ruggie 1986). This crucial insight led critical constructivists to conceptualise the way norms work in regimes as inter-subjective working with the assumption that norm implementation requires interaction among the norm (i.e. as constituted by a treaty or script), the referring agent as well as the implementing agent. In the process normative substance is contested, and as a consequence, norms are likely to be changed (Howse and Teitel 2010). The review of the state of the art on the art of the state conducted by Kratochwil and Ruggie (1986) considers norms and rules as carrying inter-sub-jectively constructed meanings. This normative understanding of norms has been taken up by critical or consistent constructivist research dating back to Kratochwil and Onuf as the two founding fathers of constructivism (Kratochwil 1984, 1989; Onuf 1989). Their work focused on the meaning and making of rules and norms of global order. Subsequently, regimes have also spurred multiple critical investi-gations questioning the behavioural line of compliance research early on. As Howse and Teitel argue, the technical approach to study compliance mechanisms of transnational legal regimes remained on the level of standardised procedures as opposed to addressing larger normative questions. They find that, "(T)he effects of norms, including legal norms, have an inherent complexity that, as Ruggie explains, defies the positivist aspiration to link norms causally to discrete behav-ioral acts '(P)recisely, because state behavior within regimes is interpreted by other states, the rationales and justifications for behavior that are proffered, together with pleas for understanding or admissions of guilt, as well as the responsiveness of such reasoning on the part of other states, all are absolutely critical component parts of any explanation involving the efficacy of norms. Indeed, *such communicative dynamics may tell us far more about how robust a regime is than overt behavior alone*'" (Howse and Teitel 2010: 130, citing Ruggie 1998: 97–98; emphasis added AW). To summarise, in addition to the notion of the behavioural effect of norms, critical regime theorists including both international relations theorists and international lawyers have thus emphasised the constructive dynamics that are generated through processes of justification and interpretation of norms and their role under specific circumstances. This constructive and genera-tive understanding of the work of norms adds the constitutive dimension of lan-guage to the mere habitual dimension of conventional constructivist norm research. It follows that for critical regime theorists norms are contestable—in principle—at each of the three stages (compare Table 2.3).

Table 2.3 Where is normativity contestable?

Stage (agency)/ approach	Constituting (constitutive power)	Referring (social group)	Implementing (individual)
Conventional constructivist	No	No	Yes
Global governance	Yes	No	Yes
Regimes	Yes	Yes	Yes
Critical constructivist	Yes	Yes	Yes

 (4)   *Critical Constructivism: Normative Structure of Meaning-in-Use*

The fourth approach counters "the enduring structuralism of norm research
(which, AW) results in a narrow understanding of norms that equates their exis-
tence and validity with their uncontestedness" (Deitelhoff and Zimmermann 2013:
4). Instead of taking norm stability as the central analytical strength and working
with an ontological concept of norms, this approach conceptualises norms as
bearing a "dual quality: that is, they are both structuring and socially constructed
through interaction in a context. While stable over particular periods, they always
remain flexible by definition" (Wiener 2007: 49). It follows that normative quality
is generated through the social practice of re-/enacting structures of normative
meaning-in-use (Wiener 2009). In the process, normative meaning is contested
based on individually held "background experience" (Hanks 1996: 86; Wenger
1998: 8, 137), which informs a range of distinct cultural validations of normative
meaning, pending on the range of socio-cultural contexts that is brought together
in a given inter-national interaction. Accordingly contestation is in and by itself a
social activity with normative power. This perception of contestation as a norm-
generative practice marks a new turn in norms research towards embracing the
concept of normativity beyond examining the structuring power of norms vis-à-vis
state behaviour and beyond the confines of regimes.[10]

2.2   Where Are Norms Contestable?

The critical (and consistent) constructivist approach works with what is called a
'diversity ontology,' which conceptualises the practice of re/enacting normative
meaning as constitutive for normativity. This norm-generative quality prevails,
whether the practice takes place within or outside a given community. By contrast,
conventional constructivist and global governance approaches work with a com-
munity ontology (compare Table 2.2). In the case of conventional constructivism

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[10] This has been picked up, recently by critical norms research in international relations that note
that, "contestation can even generate normative power on its own", see Deitelhoff and
Zimmermann (2013: 8).

this perception qualifies practice as 'competent performance' by practitioners as members of a given community of practice who "express and convey univocal meaning for the practitioner and the broader community of practice."[11] In the case of global governance approaches, this leaves norm-generative practice to political interaction, i.e. through norm setting in international organisations and so on. To the former two, practice is constitutive for meaning, to the latter two approaches the practice itself is either meaningful—if it is recognised as competent—or not.[12]

Legal theory and political theory have also noted the crucial impact of such distinct interludes of contestation. For example, Brunnée and Toope have brought to theories international law as "interactive" by detailing stages of public delib-eration that contribute to establish the moral substance, and hence the "legality" of norms (Brunnée and Toope 2010a). And, Neil Walker has convincingly demon-strated the increasing need to facilitate "translations" of normative meaning in the context of transnationalisation of international law (Walker 2003). Even though international politics do not necessarily benefit from the distinction of a norm as "legal", given the rising relevance of the legitimacy of norms instead (compare Sands 2006; Howse and Teitel 2010; Kratochwil 2012), the critical contribution offered by the interactive approach to international law is the notion that norm-ativity depends on contingent practices. In turn, Tully has shown in his research on constitution building under conditions of cultural "multiplicity", that if the prin-ciple of mutual recognition is accepted as a ground rule for the range of potential political agents, contestation is a necessary condition to warrant democratic legitimacy (Tully 1995, 2000).

An interesting cross cutting theoretical move towards conceptualising argu-mentative contestation as entailing deontic power has been advanced by the "arguing global governance" approach (Bjola and Kornprobst 2011; as well as Onuf 1989, 2013). While referring to global governance theories, which tradi-tionally work with a community ontology, Kornprobst and Bjola propose taking a 'deontic approach' to recover the legitimating source of contested normativity. Accordingly, they "define *argumentative deontology as a communicative process shaping the status functions and deontic powers that structure how global gov-ernance is defined, practiced and reproduced*" (Bjola and Kornprobst 2013: 10; emphasis in original text). With this conceptual move, Bjola and Kornprobst follow Searle rather than Kant and open global governance theories towards a consistent constructivist perspective that focuses on the power of social practice itself. They see two advantages facilitated by this move: First, studying status functions and deontic power positions allows for a better understanding of the way global politics is ordered; and second, "a deontological approach to global gov-ernance forcefully brings language and argumentation to the front of the inquiry"

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[11] Compare Duvall and Chowdhury's critical assessment of that practice concept, Duvall and Chowdhury (2011: 337), see also Bially Mattern (2011: 70–72).

[12] For this ontological understanding of practice as competent performance, see Adler and Pouliot (2011).

(Bjola and Kornprobst 2013: 11). This move along consistent constructivist lines (Onuf 1989, 2013; Fierke 2010) entails a radical innovation for the canon of global governance theories: For it takes a decidedly normative approach of deontological ethical reasoning, which rests the constitution of the normative substance of global governance entirely on language,[13] Agency—understood as deontic power, which follows from assigned status functions—is thus socially constructed. "[D]eontic powers are constitutive of global agency and they prescribe the spectrum of moral responsibilities within which the agent can legitimately function" (Bjola and Kornprobst 2013: 12). By linking the principled debate about the ground rules of global order with consistent constructivist methodology, this approach offers the most concise approach to practice as morally constitutive, so far. While the "arguing global governance" argument approaches contested normativity from global governance theories, two aspects are noteworthy for the argument about contestation as a social practice that is constitutive for normativity, which this book seeks to develop further. First, this approach conceptualises normativity as generated through argumentation, which in turn "provides a fruitful vehicle for understanding moral implications of the deontic powers that come attached to such status functions (as for example, AW) self-authorization, social recognition, political legitimacy, etc." (Bjola and Kornprobst 2013: 12). Second, it focuses on socially constructed meanings that generate understanding for moral responsibilities. The meanings depend, however, on status functions rather than predesigned moral principles or duties. In doing so, it offers an important theoretical bridge towards interactive international law as well as critical norms research.[14] As such, the arguing global governance approach will be recalled in the following Chap. 3 which addresses the political effect of contestation on legitimate and just global governance.

2.3 Contestation as Normative Practice

Building on critical and consistent constructivist approaches the *theory of contestation* distinguishes three stages in the political process where norm contestation becomes possible, albeit for exclusive actorship. Each stage considers a distinct segment on the cycle of norm validation (compare Table 2.3). Thus, the *formal validity* of norm is contestable at the constituting stage (i.e. in the process of drafting of a constitution, a treaty, a convention). At this stage, it is most likely to encounter the deliberation or justification as viable modes of contestation. The *social recognition* of a norm is contestable at the referring stage. It comes to the

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[13] Compare Erskine's distinction between "consequentialism" and "deontology" as two types of ethical reasoning in normative international relations theory (2013: 44–46).

[14] For the latter, compare Brunnée and Toope (2010a), as well as Deitelhoff and Zimmermann (2013), Kratochwil (1989) and Wiener (2008).

fore most clearly, when different social groups do not agree about which is the appropriate behaviour in a given situation. This is notably the problem spot of the 'spiral model', which struggles to link international push of norms with the absence of domestic pull, resulting in a compliance problem (Hochstetler and Viola 2012, Hochstetler 2012). The *cultural validity* of a norm is contestable at the implementing stage where individuals bring their respective background experience to bear. At this stage it is 'down' to individuals to engage with a norm, for social recognition, which would generate a sense of appropriateness of a norm is not warranted. This type of contestation is most likely in inter-national encounters where unknown agents meet whose respective background experience and normative baggage differ significantly (Table 2.3).

To summarise, given that norms gain 'normality' (defined as recognition or a sense of appropriateness) through reiterated and—notably—interactive use, it follows that the power of norms depends on the degree to which normative meaning overlaps in socio-cultural interfaces (defined as arenas). These interfaces, which I have called "transnational arenas" elsewhere (Wiener 2008) are constructed through practice, and can, therefore be reconstructed with reference to practice by empirical research.[15] That is, they emerge through the enactment of normative structures of meaning-in-use. To indicate where empirical research is likely to identify and verify such interfaces, it is helpful to distinguish three stages in the process of norm implementation and the different types of agency involved. In each of these stages normative meaning is potentially contested. The first stage is identified as the constituting stage of norm generation. At this stage a norm's formal validity is most likely to be contested. The involved actors are most likely to be constitutive powers or their representatives who bestow formal validity to selected norms by signing inter-national treaties. The second stage is identified as the referring stage. At this stage the social recognition of a norm is most likely to be contested. At this stage any type of agent acting in a societally structured context of a community making habitual reference to common socially recognised norms or rules will refer to norms without contestation. In turn, social groups that are not part of the community are expected to contest the norm. And the third stage is defined as the implementing stage. At this stage the cultural validation of normative meaning is most likely to be contested. At this stage individual agents or groups are expected to contest norms, rules and procedures according to their respective individual interests. As Table 2.3 documents, considering the type of agency involved, the four approaches to norms in international relations discussed above, show different allocations of normative contestability. Notably, two approaches provide conceptual leverage to address contested normativity at stage one (i.e. global governance and critical constructivism), while not surprisingly none of the four approaches would consider the habitual reference to socially recognised norms as contestable, yet, all approaches would allow for individual contestation of normativity. The important question, which follows now for the

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[15] For an excellent example of how to do this with MAXQDA, see Hofius (2014).

theory of contestation, is how the normativity premise may be conceptually integrated in order to fill the legitimacy gap based on equal access to contestation. To do so, it is necessary to turn towards two additional thinking tools.

Transferring these three stages of enacting normative meaning-in-use into the global realm where societal groups, political order and normative rule are neither limited by territorial boundaries, nor bound by the institutional and constitutional settings of a state, adds complexity. This complexity defies the norms conception which is derived from the community ontology standpoint. However, in doing so, it opens up new angles of contestation. After all, as the conceptual *frontier* of normativity is crossed, the likelihood of norm conflict grows. At this point Kant's hospitality principle matters in particular for research on global governance, for it devises the right to cross borders as a right bestowed on citizens as earthlings, not as citizens of nation-states.[16] As globalisation has turned border crossing into a more widely and regularly shared practice in 21st century international relations, the right to visit (albeit not the right to stay, or, for that matter, the right to be welcomed or served) other places has become an important pre-condition for entering into interactions with others. This interaction includes a multitude of different types of actors and extends over the range of policy areas, including foreign policy, defence and security. As Fierke notes, "(O)ver the last century in particular the range of actors involved in some form of cross-border communication related to war has multiplied. Not only states, but international organizations, nongovernmental organizations, journalists, and others have shaped the experience of war" (Fierke 2005: viii).

Whether and if so, under which conditions, these interactions or any international interaction generate conflict, remains to be established by empirical research. The answer is likely to vary. It will depend on a range of contingencies. These inter-national encounters may occur in the context of international organisations, international regimes, in the context of epistemic communities or international conferences, workshops or events where individuals of different national cultural roots encounter each other. They also occur in the environment of multinational corporations. Reversely, it has been shown that with reiterated international encounters transnationalisation reduces the potential for normative conflict, as the distinctiveness of nationally different roots fades, and transnational arenas—therefore—emerge. The following Chap. 3 explores the potential impact of contestation under conditions of diversity in the global realm.

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[16] See Kant (1984), for a different and somewhat misleading interpretation of the principle see Benhabib (2006), and critically Waldron (2006) in the same volume.

2.4 Conclusion

This chapter explored the normativity premise as the first 'thinking tool' towards a theory of contestation. To that end, it compared four approaches to norms research in international relations (i.e. conventional constructivism, global governance, regime theories and critical constructivism). As the key reference literature for the theory of contestation chapter two revised these approaches, in order to establish first, the allocation of contestable normativity (i.e. as either community-based or practice-generated); second, it identified and compared the analytical approach to norms (i.e. as either structuring, constructed or of dual quality); and third it evaluated the contestability of norms at each of the three distinct stages of norm implementation (i.e. the constituting stage, the referring stage and the implementing stage). Given that at each stage a specific type of agency is predominant, this comparison revealed differences with regard to the expected norm contestability (compare Tables 2.2 and 2.3). While both the constituting and the referring stage show mixed results, all four approaches concur that contestation is expected at the implementing stage. *According to the normativity premise, the implementing stage should therefore be considered as the access point for empirical case studies.*