1 Whose Practices Count?

If a norm lies in the practice, and practice is always norm-generative, the repertoire of practices that count towards norm change seems vast in global society. When studying normative change, therefore, the question of Whose Practices Count is key. The quest for including the agency of the many when accounting for the constitution, contestation and re-constitution of normative change is enhanced by the *quod omnes tangit* principle, i.e. what touches all must be approved by all. Yet, while the global order touches all, the conditions for engagement are not equal. In an effort to counter the causes of global inequality, the Global International Relations project seeks to take better account of culturally diverse agents that act under plural conditions of engagement at different local sites in global society.[1] This book contributes to this project by examining affected stakeholders' practices of norm validation and by critically scrutinising the conditions that shape them. To that end, empirical research begins from global norm conflicts which are marked by recurring public objections to breaches of extant fundamental norms such as, for example, fundamental rights, the prohibition of torture or the prohibition of sexual violence against women and girls during wartime.

While global norms affect all, engagement with these norms takes place on local sites and is shaped by distinct conditions. Studying affected stakeholders' objections to breaches of norms therefore presents an invaluable prism through which the project of exploring perspectives for a better understanding of the local-global co-constitution of normative change may be advanced.[2] The book explores this perspective by

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[1] Zwingel 2012; Acharya 2014, 2016; Hurrell 2016.
[2] See Hurrell's important proposition that '[t]he pathway to a global IR will need to look beyond "IR" and is likely to require new models for organizing social science research and knowledge production' (Hurrell 2016: 149).

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linking breaches of global norms with engagement at a multitude of local sites.[3] In light of this multitude, however, studying normative change presents two major challenges for IR theory. The first lies in identifying the means to study normative change at the intersection of local and global dynamics; the second lies in the prevailing 'disciplinary orthodoxy' of state-centric conceptions of global order in International Relations theory.[4] This book addresses both from the vantage point of norms research in Global International Relations (hereafter referred to as Global IR).

The question of whose practices count for normative change centres on norm contestation as a social practice of objecting to or critically engaging with norms.[5] While objection to norms is widely accessible to affected stakeholders based on activities such as, for example, protest, rejection, negation or accusation, by contrast, critical engagement with norms requires specific facilitative conditions such as access to a range of practices of norm validation. Therefore, local normative opportunity structures determine whether or not an affected stakeholder's practice counts. To examine whose practices actually *do* count and whose *ought* to count, the book therefore distinguishes between *re*active contestation, or the practice of objecting to norms, on the one hand, and *pro*active contestation, or the practice of critically engaging with norms, on the other. The importance of this distinction in the examination of the local-global co-constitution of normative change is illustrated by three case scenarios on fundamental rights, torture prohibition and sexual violence prohibition.

Each scenario begins from a global norm conflict when reactive contestations of an extant fundamental norm become public, and then zooms in on local contestations to identify whose practices count in the processes of norm validation. It is argued that access to norm validation marks the threshold towards norm appropriation. It follows that as stakeholders' contributions to the negotiation of normative meaning grow, so does their opportunity for norm appropriation. The book distinguishes three practices of norm validation (i.e. formal, social and

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[3] Weldes and Saco 1996; Milliken 1999.
[4] See Tully 1983: 490, who highlights Skinner's methodological critique of 'the inadequacies he sees in orthodox procedures for studying the history of politics' and his application of Wittgensteinian speech act theory, citing Skinner 1974. I thank Jonathan Havercroft for pointing out the latter. For a critique of the disciplinary orthodoxy in IR, especially as regards the perseverance of state-centric approaches to address cultural recognition, see for example Reus-Smit 2017.
[5] For this definition of contestation from a bifocal empirical and normative vantage point, see Wiener 2014.

cultural validation) to observe normative change and critically evaluate the global rules of engagement. By undertaking this research, through this book I seek to contribute to the Global IR project, asking whose practices actually do count for normative change, while at the same time keeping in mind the *quod omnes tangit* principle that the practices of all affected ought to count. From this explorative vantage point, each case scenario identifies norm change with regard to extant emergent and hidden norms, and then devises potential transformative change with regard to emerging 'themes' for Global IR.[6] The following parts of this first section address the principled approach to practice and identify the main concepts and the book's exploratory approach. The second section then details the book's intended contribution to Global IR.

Normative Change: A Principled Approach to Practice

The principled approach to practice is chosen to account for and engage with cultural diversity in global society. As such it becomes a means for countering injustice. Following Tully's seminal point on the prevailing 'strange multiplicity',[7] liberal rules of engagement in a predominantly 'Western' global order must appear odd.[8] This lack of fit between principles and practices is taken as a central conundrum for research on normative change. While IR theorists have noted the limited function of states as sites where recognition of cultural diversity is negotiated in global society, a state-centric understanding of international relations prevails all the same.[9] In turn, pluralist theories have noted the central importance of the interplay between 'multiple, overlapping normative communities' for normative change.[10] The two perspectives take fundamentally different vantage points to explore normative change. The prevailing IR theoretical state-centric approach centres on states as the main sites for norm constitution, contestation and re-constitution; the pluralist position puts an emphasis on practices when studying the constitution, contestation and re-constitution of norms. This book follows the pluralist focus on practice. As Tully rightly notes, if 'legal and non-legal, formal and informal, institutionalised and non-institutionalised practices of norms and government crisscross and overlap in any setting,

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[6] The emergent themes are 'moral responsibility', 'universal jurisdiction' and the 'culture of impunity'. They are detailed in Chapters 5, 6 and 7, respectively.
[7] See Tully 1995 and Reus-Smit 2017: 6 in reference to Tully 1995: 11.
[8] Acharya 2017.   [9] Reus-Smit 2017: 31.   [10] Schiff Berman 2009: 226.

we need to study the interrelations between the two general fields of legal and non-legal normative relationships in practice'.[11]

Two leading questions, then, guide the principled approach to practices; namely, whose practice does count and whose voice ought to be heard. To account for both, the book focuses on 'contestations' that are indicated by applying 'contestedness' as a 'sensitising concept'.[12] The contestations are compiled in repertoires which are used as a database to explore normative change systematically. To that end, contestations are first contextualised on site; second, they are mapped within the global 'multilogue';[13] and third, they are evaluated with regard to their transformative effect on the global normative 'structure of meaning-in-use'.[14] These research steps are informed by global norm conflicts as empirical indicators and practices of norm validation as indicators of access conditions. The steps are undertaken to illustrate the constitution, contestation and re-constitution of normative meaning in selected case scenarios. To evaluate 'access to' and 'effect of' the practices that count, the book's agency-centred approach to norm change connects well-known explanations of norm conflict with less well-researched explorations of contestations. The principled approach to practice raises the question of which 'themes' would be brought to the fore through contestation if those affected by the norms that touch them did have a say. The question is key to the pluralist Global IR project as this research allocates themes that matter to identify commonality and/or tensions vis-à-vis normative meaning-in-use. It is therefore a central research issue for Global IR.

To answer the question, the book gives affected stakeholders a 'virtual voice' in the global multilogue. The focus on global conflicts about extant fundamental norms is analytically informed as these conflicts are indicated by affected stakeholders' reactive contestation, which expresses

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[11] Tully 2012: 236.

[12] For sensitising concepts, see Blumer 1954; for the principle of 'contestedness' according to the theory of contestation, see Wiener 2014.

[13] This reference draws on public philosophical perspectives on politics in multicultural societies. The concept of 'multilogue' is crucial for studies on the contestation, constitution and re-constitution of norms in global society because it allows for research 'to ensure that a new norm of mutual recognition is acceptable by all, it needs to pass through an inclusive dialogue'. This is what Owen and Tully 'call a "multilogue"' (see Owen and Tully 2007: 283).

[14] See Milliken's seminal observation that 'discourse as "a structure of meaning-in-use" implies that discursive studies must empirically analyse language practices (or their equivalents) in order to draw out a more general structure of relational distinctions and hierarchies that orders persons' knowledge about the things defined by the discourse' (see Milliken 1999: 231, citing Weldes and Saco 1996: 373); for the adaptation within a bifocal empirical and normative perspective, see Wiener 2009: 176.

objection to breaches of norms. Global conflicts are allocated through a method which applies the concept of 'contestedness' as a sensitising concept.[15] The publicly demonstrated accumulation of reactive contestation is termed a global norm conflict which, in turn, is addressed by and expressed through contestation on site. Whether or not proactive contestation is possible at these sites stands to be empirically evaluated. Mostly, if not exclusively, global conflicts address objections to breaches of extant fundamental norms (e.g. the rule of law, fundamental rights, the torture prohibition norm or the sexual violence norm).[16] According to the leading literature on norms in international relations, conflict is expected when universal validity claims that define the value of a fundamental norm, are contested locally.[17] It is therefore the tension between the expected global moral reach of a norm on the one hand, and the contested local implementation of a norm on the other, which sheds light on reactive contestation on behalf of affected stakeholders on site.

By taking an explorative rather than an explanatory approach, this book considers norm implementation to be a stage in the ongoing process of norm constitution, contestation and re-constitution. It follows that, analytically speaking, norm implementation is not considered an end in itself, and therefore is not an endpoint in the process of norm implementation. Instead, it represents a point in the trajectory of constitution, contestation and re-constitution of normative meaning, where proactive contestation, if and when it becomes possible, opens a window towards conflict resolution and reconciliation. The window is indicated by novel 'pathways' towards policy making or politics based on common organising principles that evolve through dialogue. That is, reconciliation becomes possible if and when novel organising principles are generated through stakeholder engagement.[18]

Methodology: Normativity and Sensitising Reading

Akin to the rise of the concept of norms in the 1990s, the concept of contestation has been making inroads into IR discussions around the world in the 2010s.[19] To prevent this concept from becoming a catch-all

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[15] Chapter 4 develops this method in detail.
[16] Chapters 5–7 present illustrative case scenarios on the three latter fundamental norms.
[17] Brown 1997; Dunne and Wheeler 1999; Ignatieff 2017.
[18] I thank Jim Tully for highlighting this important point about 'affected stakeholders' who turn into partners resolving conflicts through contestation on site by identifying common ground rules.
[19] For some of these events, compare especially the workshops *A Phoenix Tale? The Dynamics of Norm Robustness*, Goethe Universität Frankfurt in 2015, and the follow-up workshop in 2016; *The Dynamics of Dissent: Direct and Indirect Contestation*, Workshop

term that stands for anything from violent street protest to routine committee deliberations, it is important to identify the scope and application of the concept with regard to specific research questions. As with all moves or turns in IR theory, the concept's value-added stands to be marked by theoretical strength, methodological rigour and the ultimate ability to normatively convince. The book seeks to bring these qualities to the fore by refining the principled and methodological underpinnings of norms research and illustrating its added value by exploratory research on normative change in three case scenarios which address contestations in global norm conflicts about fundamental rights, torture prohibition and sexual violence prohibition.

The book's contribution to the Global IR project draws on a turning point in the norms literature which has opened promising perspectives: moving on from research that centred on the structural power of norms beyond national boundaries, current studies address precisely the opposite. Now, norms research centres on understanding and explaining norm change or robustness in relation with practices of contestation. This shift of objective includes the conceptual shift from norms *as* structures towards norms *within* discursive structures or larger practices, as it were.[20] By focusing on contested meanings, this research allocates norms in the practice and, relatedly, devises change as generated through practice. As this book will emphasise throughout, this focus on practice proves enabling for norms research insofar as it facilitates a distinctive understanding of how different types of social practices (i.e. cultural everyday practices versus political practices of negotiation or deliberation) work. Practice-centred research on norm change refines insights on agency which matter for Global IR's decidedly non-state-centric take on IR theory.

As a subfield of constructivist norms research, contestation research builds on the former's leading theoretical contributions and methodological tools. Despite more than two decades of norms research,[21] the field still remains challenged to improve its take on ethical and moral issues.[22] Conversely, the discipline of ethics has been grappling with the issue of

      Nuffield College, University of Oxford, 2–3 June 2017; and a series of norms workshops and panels held at ISA between 2008 and 2017.

[20] For many, Deitelhoff and Zimmermann 2017.

[21] Kratochwil 1989; Katzenstein 1996; Finnemore and Sikkink 1998; Risse, Ropp and Sikkink 1999.

[22] Compare Frost 1998 on a 'turn not taken'; Price 2008; Hoffmann 2009: 1; Weber 2014 on 'between 'isses' and 'oughts''; Havercroft 2017 on 'explanatory' versus 'exploratory' approaches reflecting these.

justice beyond national borders. As Sen notes, for example, '[E]ven though actual agitations for justice may be conducted *locally*, the ethical basis of the demands for justice must have some *universal relevance*'.[23] This book's theme of constitution, contestation and re-constitution of norms seeks to offer a contribution towards filling that research gap[24] by shedding light on norm change through contestation. It examines the effect of specific contestations (expressed in a reactive or proactive way) that are practiced on local sites, then put into a global multilogue to devise transformative change in the wider context of global norm conflicts. In doing so, the book identifies access to distinct practices of formal, social and/or cultural norm validation, and then reveals the conditions that shape affected stakeholders' opportunities to engage in proactive contest-ation. It is argued that through critical engagement with *extant* norms, novel *emergent* and or previously *hidden* norms come to the fore. This focus on novel norms has been less pronounced by the early norms literature, which tends to prioritise the stable quality of norms (i.e. analysing power and robustness of norms) over their flexible quality (i.e. analysing norma-tive innovation and change). By contrast, according to the dual-quality assumption, both the structuring and the constructed quality of norms matter for understanding how norms work.

Norms are implemented within a discursive environment. This envir-onment entails empirical behavioural indicators (the 'isses') as well as normative patterns (the 'oughts'), which together form the contestation repertoire that is re-enacted when stakeholders engage.[25] Therefore, both cultural knowledge and patterns of normative meaning matter for the composition of these repertoires. They compose the structural layers that are fabricated through interaction in this environment. It is here where the norms and the practice literature come together in a bifocal approach. The book's guiding research assumption holds that while reactive contestation is an indicator of global conflict, transformative change is likely to occur when conflictive engagement about extant

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[23] See Sen 2017: 261 (my emphasis); I thank Jan Wilkens for alerting me to this reference; see also Forman and Mackie 2013.

[24] For others working towards that goal, see for example Ainley 2015; Frost and Lechner 2016; Sending 2016; Erskine, Steele and Robinson 2017; Havercroft 2017a; Ulbert 2017.

[25] Compare Searle's example of a promise, as the utterance is both a factual statement (I promise to do x) and normatively binding (by promising to do something I have made a commitment that would be wrong to break); see Searle 1995; I thank Jonathan Havercroft for this reference.

fundamental norms involves proactive contestation on behalf of affected stakeholders. The case scenarios illustrate this assumption.

Noting the 'uncertainties' that often follow from conflict about fundamental norms in global society – and given the make-over of organisational bodies in current global politics – 'dialogue' becomes a central element. As de Wet notes, '(I)n time, this *dialogue may result in more underlying consensus* between the different actors, *less differences in interpretation* and better protection of individual human rights by international organisations'.[26] Given the crucial role of global dialogue, while taking into account the lack of real dialogue, this book identifies stakeholders who are 'affected' by a norm conflict and demonstrate their objection to breaches of a fundamental norm. At the same time these stakeholders need not necessarily interact directly. Instead, interaction is facilitated by putting stakeholders in a global multilogue.

To do this, I undertake a sensitising reading of a selection of core fundamental norm conflicts such as, fundamental rights of individuals in Chapter 5, the torture prohibition norm in Chapter 6 and the sexual violence prohibition norm in Chapter 7.[27] A deductive method of 'sequential reading of the text corpus usually yields "sensitising concepts" in the form of recurring themes'.[28] To offer the text corpus for this sequential reading, contestations are mapped and the trajectories of stakeholder involvement are reconstructed. The text corpus is then re-read in order to identify novel emergent and hidden norms. According to the bifocal approach which reflects the 'is/ought' dimension of norms research, then emergent and hidden norms are devised both empirically (which norms are frequently addressed in the text corpus?) and normatively (which adjacent norms in the literature underlie the themes revealed by the text corpus?). Both readings reveal norms which indicate the sites and the quality of change that is possible in the global normative structure of meaning-in-use at a given time.[29]

[26] De Wet 2009: 162 (my emphasis); with regard to the importance of reading 'dissensus' and 'consensus' as two closely related activities with regard to the emergence and interpretation of fundamental norms in global society, see also Chesterman 2008, who notes that a 'high degree of consensus on the virtues of the rule of law is possible only because of dissensus as to its meaning'; (Chesterman 2008: 2); I thank Christine Schwöbel for this reference.

[27] I thank Maren Hofius for introducing me to the method of 'sensitising reading'.

[28] Hofius 2017: 10.

[29] For a summary of each scenario's findings, see Tables 5.2, 6.2 and 7.2; for a comparative overview of these findings see Table 8.1.

Main Concepts

The term 'affected stakeholder' is applied to describe those who are morally entitled to contest the norms that govern them.[30] Yet, despite this entitlement, access to contestation remains an ideal, for in global society, affected stakeholders often do not operate on the same site, or actually 'talk' to each other. The book addresses this distance and seeks to overcome it based on a novel framework which involves placing stakeholders in a virtual multilogue. This is achieved by mapping utterances and putting them on the same stage.[31] The framework draws on literature in IR theory, international law, and public philosophy. It facilitates the examination of normative change by taking account of practices in international relations on site.[32] The motivation to peer beyond the formal limits that restrict affected stakeholder access to norm validation from a practice-centred approach is informed by constructivists and public philosophers alike: locating norms in the practice, while considering practice as norm-generative, is therefore a central conceptual and methodological driver which this book seeks to both bring to the fore and get to work.

When affected stakeholders engage in contestation about extant fundamental norms, their agency depends on contingent normative opportunity structures at distinct sites in global society. The opportunity structures reflect the prevailing societal and governance institutions which represent routine and/or formally agreed constitutions, conventions and treaties that set the enabling and constraining conditions for stakeholder engagement at specific sites. The term 'affected stakeholders' is more descriptive than normative. It is used with the purpose of reversing discrimination that would evolve from formally defined stakeholders of international law, that is, the sources of international law which are defined by the Statute of the International Court of Justice (ICJ), Article 38 (1)[33] or the exclusive legitimation that underlies the concept of

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[30] Tully speaks of 'global citizens' in this regard (see Tully 2008a: 5); Chapter 3 details the *quod omnes tangit* principle.

[31] For the summary of the framework, see Chapter 4.

[32] I understand 'international relations' as relations between agents operating on the basis of different national backgrounds. This includes interactions in international law as well as politics.

[33] According to the Statute of the International Court of Justice (ICJ) Article 38 (1), the four sources are: (a) international convention, (b) international custom, (c) general principles of law, and (d) judicial decisions and the teachings *of the most highly qualified publicists* (my emphasis) of the various nations, as subsidiary means for the determination of rules of law (hereafter referred to as learned scholarship); see Chapter II, p. 25 at http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf (accessed 4 September 2017).

citizenship. Both bear the imprint of modern statehood, and with it the reification of the 'Westphalian narrative' resting on the underlying preference for a Western style liberal community (both in politics and theory).[34] Against this backdrop, 'affected stakeholders' are global 'citizens' who are legitimised by their claim to contest the norms that govern them.[35]

Following public philosophy, I define stakeholders as 'individuals and groups who are subject to or affected by any kind of relationship of power that governs their action coordination, yet who simultaneously turn and call this practice of governance and seek to contest, negotiate, and change it'.[36] The term is therefore meant to be less closely affiliated with other uses of stakeholdership that express membership – whether in a corporation, a community or a firm – and more so with claiming part of a larger community through practice.[37] As researchers who examine affected stakeholders engaging in norm conflicts, we take a decision about which conflict is brought to the fore. By choosing the tools at hand, we are in the position to decide what to 'see' through making a phenomenon visible. Research sharing this interest in bringing to light issues that have remained hidden to other less sensitive 'lenses' therefore becomes civic engagement that carries considerable normative weight. In the best case, it evolves into a conversation among 'struggling citizens' and 'learned citizens' which will – in the best case – be beneficial to both the affected stakeholders engaged in contestations 'on location' at different sites of global society.

Therefore 'centring on the "agency of the governed" facilitates an opening in the field of norms research for the normative question about stakeholder access to engage with norms (i.e. who has access to agency among the multiplicity of stakeholders)'. For 'this research focus will allow for more detailed and systematic accounts of the diversity of stakeholders as the "agency of the governed"'. And most notably, this focus proposes a shift from a given norm's effect on state behaviour towards a given conflict as constituting a site of engagement with norms through contestation. 'While prior norms research has often bracketed agency through the generalising terminology of "norm-followers," this focus on

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[34] Wilkens, Hofius and Wiener 2016; see also Miskimmon, O'Loughlin and Roselle 2017.
[35] Tully 2008b: 5.   [36] Tully 2011: 145–146.
[37] This stakeholdership fits squarely with the claim of epistemic communities that are generated through practice on a common theme (compare especially Adler 2007, but also Wenger 1998; Hofius 2016). At the same time, and taking into account its shared normative interests, it leads beyond epistemic communities, given that 'affected stakeholders' are moved towards contestation in public based on objection to or critical engagement with norms.