Introduction to *Polity* Symposium on Antje Wiener’s *A Theory of Contestation*

Jonathan Havercroft, University of Southampton

 Antje Wiener’s *Theory of Contestation* makes an important intervention into the field of international norms. Norms have formed a central part of the social constructivist research agenda in International Relations and International Law since the pioneering works of Kratochwil and Onuf in the early 1990s.[[1]](#footnote-1) Social constructivism initially developed as a new theoretical approach to the study of international politics. While more traditional approaches to studying international relations such as liberalism and realism focused on the role that material forces, such as natural resources, economic power, and military capabilities played in the behaviour of international actors, social constructivists argued that non-material forces such as the beliefs and identities determined the behaviour of international actors. International norms are one key element of the social constructivist theory of the international system. Norms specify the expected behaviour and the rights and obligations of states in the international system. Early research on norms demonstrated that social expectations of appropriate conduct (i.e. logic of appropriateness) could shape state behaviour in ways that cut against a state’s material interest (i.e. the logic of consequentialism).[[2]](#footnote-2) Much of the academic debate about norms has focused on how and when norms shape state behaviour, and on when states comply or fail to comply with existing international norms.

As Wiener notes in her introduction, because of this focus on demonstrating *that* norms exist and *how* states comply with norms, some key questions go unanswered. First conventional constructivist accounts of norms rely upon the social expectations of the international community to do most of the heavy lifting in their theoretical account. The international community creates norms that guide the behaviour of states. But if this is the case, Weiner observes, then “the norm-generative practice of international relations . . . [is] almost impossible” because it relies on a community ontology.[[3]](#footnote-3) Yet states with different cultures cannot share such a community because of their different national roots.[[4]](#footnote-4) Instead of the community generating norms (as conventional constructivists assume), Wiener argues that the participants in the international system generate norms through contestations over appropriate behavior across different the different cultures of the system. Second, much conventional constructivist research since 2000 has focused on the issue of norm compliance and when and how states abide by or disobey norms. One way in which states do not comply with norms is by contesting them. The term “contested compliance” has proliferated in the academic literature since it was introduces by Byers, and Brunnée and Toope.[[5]](#footnote-5) Yet this proliferation has come at the expense of conceptual precision.

As such Wiener’s theory of contestation addresses this gap by offering both an explanatory theory of how norms are contested and a normative defense of why they should be contested. Wiener’s argument is threefold. First, she argues that contestation generates international norms. Second she argues that all norms are potentially contestable. Third, she argues that because contestation is central to the generation, transformation and implementation of norms, International Relations scholars should draw upon the “thinking tools” developed by political theorists working on norm contestation in the area of democratic theory.

 In order to develop her theory of contestation, Wiener draws upon the public philosophy of James Tully.[[6]](#footnote-6) Tully’s work on democratic constitutionalism and agonistic political philosophy emphasizes the way in which conflict is a form of justice. Whereas other influential approaches to justice, such as Habermas’s work on deliberative democracy[[7]](#footnote-7) and Rawls’ work of political liberalism,[[8]](#footnote-8) see conflicts in pluralistic societies as problems to be solved through the development of procedures and norms which can achieve consensus amongst all participants, Tully’s approach is skeptical that finding such universally acceptable norms is possible or desirable. Instead the justness of a society should be determined by its capacity to make space for contestation of all norms and procedures, to never seek out a final comprehensive solution, but to treat all norms as always subject to contestation and revision by any and all persons who are affected by them. Wiener brings Tully’s political philosophy of contestation into IR debates over norm compliance to argue that disputes and resistance to the implementation of norms is not a problem that IR scholars, international lawyers and practitioners need to solve. Rather this contestation of norms (the fact that groups subjected to norms can contest the validity of those norms) is the very mark of their legitimacy. Wiener takes this central insight from Tully’s work to critique both liberal and critical varieties of constructivism. Against the liberal constructivist (what she calls conventional constructivists),[[9]](#footnote-9) Wiener argues that Tully’s insight that one can demonstrate understanding a norm by going against it has the capacity to explain how contestation can generate norms. Against the critical constructivists, who draw upon Habermas’s distinction between arguing and bargaining to make the case that contestation about norms is appropriate only at the implementation stage,[[10]](#footnote-10) Wiener argues that norms can be contested at any stage in their constitution, reference, or implementation.

 In order to develop this theory of contestation, Wiener proposes three “thinking tools”: 1. The Normativity premise; 2.The Diversity premise; 3.Cultural Cosmopolitanism. The normativity premise underscores a central tension in the norms literature between sociological approaches that emphasize the ways in which norms habitualize expected behaviour (i.e. the ways in which norms normalize behaviours) and legal and philosophical approaches that are concerned with the validity of norms (i.e. the normative dimension of norms). One common critique of conventional constructivists is that in their attempt to develop explanatory theories of norms, they have bracketed questions of whether or not norms are good or bad, just or unjust. This bracketing of the normative means that conventional constructivists often assume that the norms they study are good, thereby potentially ignoring the dark sides of some norms; and they may entirely ignore some norms that are bad (such as those that say a state should protect the interests of private capital over the interests of its least well off citizens). The normativity premise opens the door for a substantial engagement between empirical scholars of norms and scholars of international ethics to both critique existing norms and find sounder normative foundations for international laws.

The diversity premise draws upon Tully’s critique of Kant and contemporary Kantian political philosophy. According to Tully one of the problems of Kantian approaches to normative theorizing is that the search for categorical imperatives and universally valid principles can be culturally hegemonic. As such, Tully argues against seeking “end states” in normative deliberations, and instead argues that valid norms are those that are worked out through cross-cultural negotiation, premised on mutual recognition, mutual consent, and openness to revision and contestation at a future date. This emphasis on agonistic procedures ensures that diversity is built into the process of norm generation and legitimation.

Finally the principle of cultural cosmopolitanism argues that global politics is constituted through cultural practices. Drawing upon Tully once again, Wiener argues that there is an important interaction between practices of contestation and the principle of contestedness. Central to Wiener’s argument is that what secures the legitimacy of a norm is if it has been generated through practices open to contestation. Norms that are generated univocally, without making space for challenges from actors who could be affected by that norm are invalid. The principle of contestedness (i.e. the fact that the norm was generated through practices open to contestation, and continues to be open to contestation during referral and implementation) is what makes a norm valid.

 The five contributors to this symposium respond to Wiener’s work in a number of important and provocative ways. Christian Bueger, writing from the practice theory approach, observes that the constructivist focus on norm is unable to answer questions about how and where norms originate. While Wiener accepts and incorporates these critiques of norm scholarship in her own research, *A Theory of Contestation* still isolates norms as an object of study. Bueger argues that from the perspective of practice theory Wiener’s approach runs the risk of ignoring the larger structures of meaning which give norms their significance. Drawing upon his own research on Somali piracy, Bueger argues that Wiener’s theory would be better suited as a method for studying practices of contestation than as a general explanatory or normative theory.

 Brent Steele responds to Wiener from a post-structuralist perspective. While he shares Wiener’s desire to focus on norms and their contestation, he is concerned that *A Theory of Contestation* does not analyze how norms can be critiqued on the basis of whom the norm governs. Steele considers the cases of norms being used to produce globally stratified social structures and recent rejection of global anti-torture norms as two instances in which norms are not just contested but occasionally completely rejected. His point is that a focus on contestation may neglect ways in which norms are avoided or abolished altogether.

 Sasikumar Sundaram critiques *A Theory of Contestation* for not having a fully developed account of practical reason. Sundaram argues that Wiener’s focus on “multilogues” as generating normativity through practices of contestation should be supplemented by an account of practical reasoning. Sundaram argues that contestation is always done via a process of giving and asking for reasons. According to Sundaram, without an account of practical reasoning, Wiener’s work cannot explain how specific actors justify their support for particular norms.

 Lisbeth Zimmerman argues that Wiener’s work implicitly adopts Habermas’ democratic theory when discussing international conditions of diversity. This is a provocative reading of a *Theory of Contestation* since Wiener explicitly distances herself from Habermas and Habermasian inspired accounts of IR theory in her work. Nevertheless by situating Wiener’s account of contestation within Habermasian democratic theory, Zimmerman argues that Wiener’s work can help answer important questions about norm legitimacy.

 Finally Raymond Duvall and Jonathan Havercroft’s piece questions the implications of Wiener’s explicitly “bi-focal” approach to the study of norms. We suggest that Wiener’s focus on contestation as constitutive of international norms means that Wiener is developing an important and distinct new variety of constructivist research. We suggest that she label this approach agonistic constructivism to draw out its affinities with agonistic approaches in democratic theory. In a *Theory of Contestation* Wiener develops an approach that examines norms from both an explanatory – i.e. how norms are generated of diffused – and normative – i.e. what makes a norm legitimate – perspective. One of her claims is that by adopting this “bi-focal” approach, the theory of contestation will be of value to both academic theorists and international legal practitioners. Duvall and Havercroft interrogate the validity of this claim by arguing that there are fundamental tensions involved in speaking to these two audiences simultaneously, and presses Wiener to re-consider the implications of fusing normative and empirical work on norms.

 Wiener concludes the symposium with a reply to her critics. Her reply considers three main themes. First she argues that there is a conceptual distinction in her work between regulatory and customary practices of constitutionalism. This distinction is what underpins the bi-focal approach to the study of norms with which some of her critics take issue. Second Wiener argues that by using an approach that simultaneously explores the normative and empirical dimensions of norms, moments of norm contestation become opportunities through which actors can generate civic freedom within a global society. Third Wiener considers the suggestion from Duvall and Havercroft that *A Theory of Contestation* be considered a form of agonistic constructivism by situating her work and other scholarship on contestation in the context of calls for justice grounded in practices of recognition.

 *A Theory of Contestation* and the responses to that text in this symposium open up an exciting inter-disciplinary dialogue between scholars in the fields of international relations, international law, and political theory. By shifting the terrain of debate in norms research from questions about the existence of international norms, or whether or not international actors comply with norms, to how actors contest norms in their daily struggles for justice, Antje Wiener’s works creates an exciting opportunity for scholars to cross boundaries between political theory and international relations, international law and international politics, and empirical and normative research. While there are significant differences between the contributors to this symposium, one thing they all agree upon is that *A Theory of Contestation* should find a broad audience and inspire scholars to place the study on practices of contestation at the heart of their research.

1. Nicholas Greenwood Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Routledge, 2012); Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge University Press, 1991). [↑](#footnote-ref-1)
2. James G. March and Johan P. Olsen, “The Institutional Dynamics of International Political Orders,” *International Organization* 52, no. 04 (September 1998): 943–69, doi:10.1162/002081898550699. [↑](#footnote-ref-2)
3. Antje Wiener, *A Theory of Contestation*, SpringerBriefs in Political Science (Berlin, Heidelberg: Springer Berlin Heidelberg, 2014), vii, http://link.springer.com/10.1007/978-3-642-55235-9. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Michael Byers, “The Shifting Foundations of International Law: A Decade of Forceful Measures against Iraq,” *European Journal of International Law* 13, no. 1 (February 1, 2002): 21–41, doi:10.1093/ejil/13.1.21; Professor Jutta Brunnée and Stephen J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge ; New York: Cambridge University Press, 2010). [↑](#footnote-ref-5)
6. James Tully, *Public Philosophy in a New Key: Volume 1, Democracy and Civic Freedom*, 1st ed. (Cambridge University Press, 2009); James Tully, *Public Philosophy in a New Key: Volume 2, Imperialism and Civic Freedom*, 1st ed. (Cambridge University Press, 2009). [↑](#footnote-ref-6)
7. Jürgen Habermas, “Discourse Ethics: Notes on a Paradigm of Philosophical Justification,” in *Moral Consciousness and Communicative Action*, trans. Shierry Weber Nicholsen and Christian Lenhardt (Cambridge, MA: MIT Press, 1990). [↑](#footnote-ref-7)
8. John Rawls, *Political Liberalism* (New York: Columbia University, 1993). [↑](#footnote-ref-8)
9. Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 04 (September 1998): 887–917, doi:10.1162/002081898550789. [↑](#footnote-ref-9)
10. Thomas Risse, “‘Let’s Argue!’: Communicative Action in World Politics,” *International Organization* 54, no. 1 (January 10, 2000): 1–39, doi:10.1162/002081800551109. [↑](#footnote-ref-10)