Constitutionalism Unbound
A Practice Approach to Normativity

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Abstract

By moving processes which have been closely related with modern state-building into the realm of international relations, the implementation of the very principles and norms which established the normative roots and the constitutional basis for democracy is called into question. Does the United Nations (UN) therefore need a constitution, or is the UN altogether obsolete? Both views are currently debated by political scientists and lawyers world-wide, and both present a pressing problem for politicians and courts as recent contested UN Security Council decisions and their repercussion inside and outside European and other regional courts demonstrate. Despite this wide-ranging academic and public interest and the need to 'fix' global problems on a daily basis, there is little agreement on how to proceed. The paper suggests addressing the problem with a specific focus on normativity. This approach presents an innovative academic standpoint insofar as it seeks to apply the method of theoretical triangulation in order to engage global governance, world society studies and global constitutionalism as three heuristic approaches to inter-national relations that offer potential for addressing the shift from globalised towards constitutionalised international relations.

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Introduction[1]

While in the international academic debate the concept of "global constitutionalism" and, especially, its normative potential is viewed with some suspicion, a growing number of critical voices on decision-making procedures in the United Nations (UN) Security Council and global financial practices, in particular, stress the necessity to establish checks and balances in the global arena. Yet, this call is not uncontested. Thus, inter-national relations in the 21st century shed light on the paradoxical increase of „things constitutional" like constitutionalisation, quasi-constitutional settings and practices, on the one hand, and contested compliance with international law, rules and procedures, on the other. The paradox allows for juxtaposing the observation of quantitative change of terms with an absence of qualitative constitutional means: While the global realm harbours more constitutionalised international organisations[2] and an increasing range of a diverse range of actorship (Binder 2008, Zürn et al. 2007), compliance with international law, even with European law, is contested. This observation notwithstanding, states and representatives of government do show a clear urge to demonstrate that their actions are legitimate, as numerous references to fundamental norms such as human rights, democracy and the rule of law, as well as organising principles and standards such as the principle of shared but differentiated responsibility, sustainable fisheries, environmental standards and so forth show.[3]

The context suggests a shift from globalised towards constitutionalised inter-national relations. As such it raises deeper questions about the normative underpinning of inter-national relations concerning justice, democracy, fairness and legitimacy.[4] These issues push approaches that have specifically focused on changing politics and law in light of globalising international relations, namely global governance, world society, interactive international law and global constitutionalism and which come to their conceptual limits. Yet, the 'Constitutionalism Unbound' project argues that as heuristic approaches to international

[2] See for example Cass 2001, Cohen 2008, Dunoff and Trachtman 2009, De Burca and Scott 2003, Weiler and Wind 2003, Walker and Loughlin 2007, Dobner and Loughlin 2010, Peters 2010, Neyer and Wiener 2010 among others.
[3] See Brunnée and Toope 2010, Puetter and Wiener 2009, Risse, Ropp and Sikkink 1999 among others.
[4] See Benhabib 2007, Sen 2009, Rawls 2007, Pogge 2009.

relations they offer a better starting point for addressing normativity based on problem-oriented theorising. In a nutshell, the project asks more generally how normativity is possible outside the limited territory of modern liberal democracies (Tully 2002, Forst 2007)1. And, more specifically, it asks how to establish legitimate governance in international relations for the highest number of the governed under conditions of cultural diversity and based on shared democratic standards in the global realm (Wiener 2010a, 337).

This paper presents the proposal establish an innovative methodology based on the concept of theoretical – rather than methodological – triangulation which will be detailed later on. Two central observations matter for this suggestion: First, the shift from globalised towards constitutionalised relations pushes global governance and world society approaches beyond their conceptual limits. While they were in the lead when IR was confronted with understanding political, societal and legal cross-border issues, they lack a theory of global normativity. Second, and despite this shortcoming, it is argued that as heuristic approaches and in conversation with the emerging interdisciplinary field of global constitutionalism they offer an appropriate – if diverse and incomplete – starting point towards normativity based on problem-oriented theorising.

A note of caution is on order at this stage of writing: The paper's four sections are still somewhat separate, thus requiring more detailed and specific links in further versions. For now, the key point is to demonstrate that working with a practice approach in IR should be considered as *continuity rather than a 'turn'*. It cautions against overdoing the emphasis on methodology and keep a firm view on normativity instead. As that appears to be vanishing, my contention is that a 'normative turn' taking the practice approach into consideration is called for instead. My concern with calls for a 'practice turn' in IR is that they harbour the risk of taking normativity out of the equation. By valuing methodology over theory, a practice turn may lose out on the reflexive interplay between social practice and social science which is central to critical theory and which is necessary to understand how norms work (Kratochwil 1984). While practice matters, to be sure, I would argue that the point is to understand the interrelation between social practice and the normative underpinnings *as* the constitutive elements of inter-national relations (Reus-Smit 2001, Brunnée and Toope 2010).

Section 1 summarises the practice approach to norms research in IR and identifies pointers for research on constitutionalism beyond the state. *Section 2* turns to the emerging interdisciplinary field of global constitutionalism. From a practice approach it takes a fist cut at structuring that new field based on three groups' distinct functional, normative and pluralist approaches. *Section 3* introduces the concept of theoretical triangulation as a way to approach

normativity from three different theoretical angles of a triangle: global governance, world society and global constitutionalism.

Section 1: The Practice Approach to Norms[5]

A practice approach rests on the principal distinction between actor-based approach and an activity-based approach as the basis from which inter-national relations are studied. Accordingly (neo-)realists and international lawyers alike, generally approach the subject of international relations by taking a narrow actor-based approach and therefore defining 'inter-national' to mean 'inter-state' relations based on the reference to *ius gentium* (the law of nations). In turn, a practice approach applies a broader activity-based understanding of actorship which defines 'inter-national' to mean the process of interaction between two actors of different national background. This activity-based definition of inter-national relations allow for the disaggregation of state actorship into sets of social practices that entail, for example, organisational and cultural practices (Tully 1995). If social practices are to be acknowledged as carriers of meaning (Taylor 1993), as experiences which are constitutive for background information (Wengger 1998, Esser 2002) and as discursive interventions which enact normative structures of meaning-in-use (Weldes and Saco 1996, Milliken 1999, Titscher et al. 2002), a focus on practice needs to start from an activity-based ontology.

Constitutionalisation and Constitutionalism

At issue for students who seek to examine constitutional quality is an understanding of the diversity and commonality in the application and recognition of the respective interplay between rules, norms, principles and practices at a particular place and time. Based on this understanding, it is possible to carry out a bifocal analysis to assess both – the stability and effectiveness of such agreements in the eyes of the agreements' addressees, as well as the normative substance and durability of an agreement according to the normative standard of democratic legitimacy. Constitutionalism is a product made and re-made through on-going debates, reflecting the contested quality of its own very norms, rules and principles (Gallie 1956; Lessig 1996; Kahn 1999). As a heuristic theoretical framework, it entails meta-theoretical debates about questions such as why a constitution is legitimate, why it is authoritative and how should it be interpreted, on the one hand, and a more descriptive approach that establishes whether particular features of a constitution are in place or not, including the assessment of constitutionalisation as the process which leads to the

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[5] This section draws on Wiener (2008, Ch. 2).

establishment of such specific constitutional features, on the other (Craig 2001, 127; Maduro 2003). The reflection of the practice of jurisprudence and academic discussion about the law sustain the contextuality of constitutionalism. In turn, constitutionalisation is an exclusively descriptive concept. It indicates the recollection of constitutional norms, rules and decisions as outcomes of a process (e.g. Rittberger and Schimmelfennig 2007). In this process, particular institutions and routine procedures adopt a legally binding quality which underlies the triadic practice of constitutional scrutiny (Stone Sweet 2002).

In sum, for analytical purposes it is helpful to distinguish between *constitutionalisation* as a social process and *constitutionalism* as an analytical framework.

Cultural and Organisational Practices

Contextualising constitutional quality is a first step towards understanding social recognition as a process that is more 'practical and "permanent" rather than theoretical and end-state oriented' (Tully 2000, 477). Thus the development of different types of constitutionalism over time can be distinguished. For example, ancient constitutionalism puts a stronger emphasis on the social construction of the nomos, while modern constitutionalism focuses on constitutional design to provide guidelines for the organisation of a polity. In order to recover the social construction of constitutional substance, for example, James Tully proposes to reconstruct multicultural dialogues by 'looking back to an already constituted order under one aspect and looking forward to an imposed order under the other' (1995, 60–1). This reconstruction of dialogues allows for incorporating *cultural and organisational practices* of the past while addressing central concerns in the present and the future.

To analyse how norms work in contexts beyond the state, empirical research would raise the question of whether, in the light of the presence of such constitutional norms, the meanings of treaty language and constitutional discourse and the practices that were constitutive of them as well as guided by them can be expected to converge. As an academic artefact, constitutionalism offers an analytical reference frame for such an assessment. It provides different perspectives on the process of constitutionalisation, distinguishing between a meta-theoretical perspective on possibilities and purposes of a constitution, and a descriptive perspective to establish whether or not particular features of a constitution are actually in place (Harlow 2002). The latter perspective details constitutionalisation as the actual process leading to the establishment of such specific constitutional features (Craig 2001, 127; Stone Sweet 2002, 96).

The potential for conflict caused by moving constitutional norms outside the bounded territory of states lies in decoupling the customary from the organisational. It is through this transfer between contexts, that the meaning of norms becomes contested, as differently socialised actors such as politicians, civil servants, parliamentarians or lawyers trained in different legal traditions seek to interpret them. In other words, while in supranational contexts actors might well agree on the importance of a particular norm, such as the proposition that human rights matter, the agreement about a specific norm based on a formal agreement (formal validity) does not allow for conclusions about the meaning of norms. As in different domestic contexts that meaning is likely to differ according to experience with 'norm-use' (Kratochwil 1989: 18), it is important to recover the crucial interrelation between both types of social practices, i.e. the *cultural practices* that generate the customary, on the one hand, and *organisational practices* facilitated by public performance that interprets the norm for political and legal use, on the other. Both contribute to the interpretation of meanings that are entailed in constitutional norms. While organisational practices might be fully reflected in a single constitutional frame such as the European treaties, it is the cultural practices of the treaties' addressees that will have a decisive impact on how core constitutional norms are interpreted individually. This situation is relevant for the interpretation of constitutional norms in any context including, for example, the respective Canadian or US one-states, the European non-state, or United Nations beyond-the-state contexts. Comparative case studies are therefore important to reveal the contingent impact of culture on interpreting the meaning of constitutional norms.

Bringing Cultural Practices Back In

A contextualised approach to constitutionalism takes social practices as its key empirical indicator. Notably, these practices have been distinguished as organisational practices which are predominant in modern constitutionalism and as cultural practices that have had stronger impact on ancient constitutionalism. The dual quality of norms' assumption of the contextualised approach holds that social practices are always inextricably linked with norms. Under conditions of transnationalisation, social practices transgress the boundaries of organizational units with an impact on normative meaning that stands to be established empirically. Different from fixed organizational practices that entail the constitutionally or treaty-based rules, procedures and principles, cultural practices offer access to individually held background experiences which inform diverse expectations towards the meaning of the formally stipulated set of rules and principles. To make this individually held and hence to

political scientists largely invisible range of meaning accountable, it is necessary to bring different individual background experiences to the fore (Garfinkel 1967).

The leading question is therefore: *How are normative meanings which are in use at a particular place and time, enacted by different social groups, and to which effect?*

To make meaning accountable, critical and consistent constructivists have turned to discourse analysis (Weldes and Saco 1996, Milliken 1999, Hansen 2006, Fierke 2006). While much of the available literature in International Relations theory, especially in the area of foreign policy analysis, has conducted empirical research based on discourse analysis, the methodological details require borrowing from the neighbouring disciplines of anthropology, ethno-methodology and sociology. The framework comprises distinctive norm types, conditions of norm contestation, types of norm divergence and a specific evaluation technique. To that end three dimensions of normative understanding – formal validity, social recognition and cultural validation – are distinguished. The discourse analytical method of conducting and evaluating interviews involves the technique of opposition-deriving to reconstruct normative structures of meaning-in-use in different contexts. These are constituted with reference to keywords which are empirically derived from discursive interventions as the cultural practices which matter for putting the indexicality of meaning together.

Cultural practices therefore play a key role for the project of uncovering hidden meanings of norms which deviate from the texts of legal documents and expected shared recognition stipulated by modern constitutionalism. This specific perspective on cultural practices involves a 'prospective' as opposed to a 'retrospective' method of analysis (Tilly 1975, 14, Tilly 1980). Methodologically, the focus is set on specific decisions taken at 'major historical choice points' in the past to inquire why they come about and seeks to show that the outcomes might have been different if additional information had been available (Tilly 1980, 679). The choice points that matter to this investigation about the meaning of fundamental norms involve the series of decisions which led to the signing of the Constitutional Treaty in 2004. This approach works with the assumption that, in addition to reconstructing constitutional dialogues with respect to both sets of practices – organisational and cultural – that are constitutive for the meaning of constitutional norms, understanding norms in contexts beyond the modern state requires a comparison of different – transnational and domestic – arenas, as the places in which international politics take place. Accordingly, the comparative

research is designed to identify patterns of interpretation.[6] Notably, this concept of 'meaning-in-use' is based on contextualised structures of meaning which come to life only through interaction.

As a consequence of decoupling organisational and cultural social practices of the nomos, which is constitutive for a situation in which constitutionalism is 'unbound', conflictive interpretations of norms are expected. That is, *effectively, the social practice of individual – rather than group-based – border crossing means crossing the boundaries between potentially different 'normative structures of meaning-in-use'*. This process enhances the contestation of meanings, as differently socialised individuals – politicians, civil servants, parliamentarians or lawyers – who have been trained in different legal traditions and socialised in different day-to-day circumstances seek to interpret them. While the potential for misunderstandings and conflict can be kept at bay by adding a deliberative dimension to facilitate arguing and ultimately persuasion that one meaning should legitimately trump another, arguing will establish agreement about a particular sort of norm within a limited context only. For interpretation and implementation this agreement, i.e. the social recognition of norms, needs to be carried into the various – presumably, but not exclusively, domestic – contexts.

The process of implementing international agreements therefore depends on our grasp of these cross-border linkages between distinct normative structures of meaning-in-use. To assess probable scenarios of norm recognition or contestation, it is therefore important to recover the interrelation between the social practices that generate meaning, on the one hand, and public performance that interprets the norm for political and legal use, on the other (Kratochwil 1989). In order to counter "the invisible constitution of politics" and its unknown impact on political decision-making, case studies need to reconstruct and compare the way normative structures of meaning-in-use are enacted in different contexts.[7]

Section 2: Global Constitutionalism, an Emerging Interdisciplinary Field

While a degree of constitutional quality in the global realm has been building political momentum over the past decade, international relations (IR) scholars remain hard-pressed to identify the detailed practices that are conjured up by the term 'constitutional quality'. The

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[6] As Reinhard Bendix notes, for example, 'comparative studies illuminate the meaning of sociological universals'. They allow us to question 'usual connotations' which may be adopted into scholarly language from ordinary speech and seek to 'make these connotations explicit' (1963: 535).

[7] In a previous case study, I compared four social groups, (1) Londoners, (2) Berliners, (3) British Brusselites, (4) German Brusselites in three different social contexts (1) London, (2) Berlin, and (3) Brussels, (compare Wiener 2008, Chs 5-8).

purpose and practices of global constitutionalism are not altogether straightforward and, so far, the phenomenon has received little attention from IR scholars. Even though not only the EU but also the World Trade Organisation (WTO) and, perhaps most importantly, the United Nations (UN) and their various bodies have made decisive moves towards constitutionalising their inter-national operations.[8] The literature in the field of international and/or European law which has addressed these constitutionalising moves defines constitutionalisation as "the gradual emergence of constitutionalist features in international law" (2009, 397) which are expected to "compensate for globalization-induced constitutionalist deficits on the national level" (Peters, 2009, 397).

Much has been written about the various micro-processes of constitutionalisation and their input on these international organisations (Cass 2001, Dunoff and Trachtman 2009), however, the normative debate about the dimensions of what constitutional quality in the global realm 'ought' to look like, on the one hand, and which range of constitutional practices might be 'possible' given the global diversity of constitutional practice, on the other, has just taken off the ground. Notably however, *international lawyers appear to be taking the driver's seat* with political scientists and especially IR theorists remaining to catch up with the debate. To be sure, a 'constitution' is traditionally put into place to keep politics in check by rules that have been put into place by the *pouvoir constituant*, i.e. members of a community as its constituent power, the concept typically has a higher currency with lawyers than with political scientists and sociologists. However, as the latter have recently joined an ensuing and often quite controversial debate about global constitutionalism, it is crucial to agree on common definitions and concepts. As this debate demonstrates, the academic literature alone (notwithstanding media reports which often add yet another altogether different line of meanings) diverges widely in their respective interest and understanding of global constitutionalism.

Three Groups: Functionalist, Normative, Pluralist

The debate, lends itself to conduct a structured approach to leading definitions and conceptual clarifications. I suggest grouping it according to three groups which can be roughly distinguished according to their respective *functionalist, normative* or *pluralist* understandings of global constitutionalism. According to the *practice-based distinction* suggested by this paper, three groups of scholars stand out. The first group takes a functionalist approach. Typically, studies draw on clusters of constitutional activities in the

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environment of international organisations, most prominently the World Trade Organisation (WTO) (Dunoff and Trachtmann 2009), (Fischer-Lescano and Teubner 2004), (Fischer-Lescano 2002), (Kingsbury, Krisch, and Stewart 2005). The second group pursues a normative approach and would consider global constitutionalism as a strategic move towards establishing or accommodating a global constitution. Some would argue that this constitution does already exist in the form of the United Nations (UN) Charter (Fassbender, Habermas). Others would hold that a constitution without a state as the context of the people as the constituent power of any constitution is neither required nor possible (Grimm, Loughlin). While agreeing on the preference of 'shaping' the world order, the normative group differs sharply between supporters and contenders of a global constitution (Fassbender 2007), (Eriksen 2005), (Grimm 1995). Finally, a third group would consider global constitutionalism a pluralist approach to constitutionalism beyond the state. This approach typically builds on a conceptual continuum from European constitutionalism (De Burca 2009, Halberstam, Isiksel, Krisch, Stone Sweet, Walker and others).

While all groups share in the observation of a qualitative shift from globalised towards constitutionalised relations, the concept has gradually come to serve different purposes nonetheless. Notably, the distinctive perspectives are not predominantly informed by disciplinary approaches, e.g. as lawyers or political scientists, but follow the way in which the concept is used. Notably, the distinction is thus *practice-based*. The main distinctive features have developed according to a choice of either *mapping* or *shaping* the global realm according to constitutional standards. As a novel phenomenon in the global realm, global constitutionalism has evolved from more familiar observations of 'constitutionalism beyond the state', 'post-national constitutionalism' or 'European constitutionalism' (Shaw 1999, Weiler and Wind 2003, Walker and Loughlin 2007). Similar to political scientists' attempts to theorise 'governance without government' (Czempiel and Rosenau 1992) global constitutionalism grapples with the consequences of globalisation as a process that perforates national/state border, thus undermining familiar roots of legitimacy and calling for new forms of checks and balance.

To summarise, while all three groups generally share the observation of enhanced constitutional quality beyond the nation/state as a result of process which can be summarised as a major shift from globalised towards constitutionalised inter-national relations, and hence agree that global constitutionalism is a new social phenomenon, the consequences derived from this observation could hardly be more opposed. The dividing line between the groups emerges according to their respective answer to the question of whether they consider

mapping or shaping the central activity of global constitutionalism. Pending on their respective standpoints, i.e. taking a functionalist, normative or relational approach, these three different groups harbour differing intentions: (1) The *functionalist* group focuses on the impact of constitutionalism on *mapping* the global terrain according to new practices. The key concept for this group is, therefore, that of constitutionalisation. (2) The *normative* group engages in the project of *shaping* the global order according to specific normative principles. The key conceptual approach of this group thus rests on the extension of principles, norms and rules of modern constitutionalism beyond the modern state with the goal of constructing a global order. (3) The *pluralist* group combines mapping and shaping, taking a reflexive approach that relates the process of structured observation (mapping) with that of normative construction (shaping). That is, it takes account of the social practices of constitutionalism as they extend beyond modern state boundaries and with the intention to identify the variety of possible and desired principles, norms and rules of constitutionalism that are considered appropriate by a plurality of global actors. Accordingly, this group involves mostly pluralists, pragmatists and critical scholars.

The challenge for scholarship contributing to the interdisciplinary field of global constitutionalism lies in developing an approach that allows to keep its two constitutive dimensions of mapping i.e. describing the shift from globalised towards constitutionalised relations and identifying their constitutional substance on the one hand, and shaping i.e. improving the conditions and substance of this shift according to normative standards, on the other, analytically apart. From this background it will be possible to identify the critical juncture in the relational process of mapping and shaping constitutional development with global reach. The proposed methodological move towards studying this development empirically is delineated in the following section.

Section 3: Theoretical Triangulation

As politics, policy making and jurisprudence move across nation-state borders into the realm of international relations, the constitutional basis of democratic governance is threatened (Zürn 2000). Current regional and universal institutional arrangements have been characterised as „small-c‟ constitutional settings. That is, while bearing constitutional quality, they are not fully compatible with modern constitutional democracy, *i.e.* a „large-C‟ constitutional setting (Dunoff and Trachtman 2009, Kumm 2009). Are these sufficient to maintain democratic governance despite moving core processes and procedures across the

boundaries of the liberal state (Kohler-Koch 1998, Jachtenfuchs and Kohler-Koch 2003), do international organisations require further constitutionalisation akin to the EU's example (Habermas 1995, Grimm 1995, von Bogdandy et al. 2006, 2010)? Do functional changes such as disaggregated sovereignty, policy networks, epistemic communities or other communities of practice offer the institutional setting for the required normative underpinning to reflect the shift from globalised to constitutionalised international relations (compare Slaughter 2003, 2004, Adler 2008, Adler and Pouliot 2011)? Despite a wide-ranging academic and public interest in „fixing" the problem of a global democratic deficit (e.g. Cohen 2010), there is little agreement on which way to move in order to maintain the proved standards of good governance that are expected in contexts of large-C constitutionalism (Kumm 2009). The problem stands therefore stands to be addressed with a focus on normativity in international relations (Cochran 1999, Frost 1986, Brown 2002). Global constitutionalism offers a two-tiered perspective on this problem: On the one hand, it is a political option that is cautioned against; on the other hand it is a normative option requiring substance and precision.[9] The proposed approach is problem-based and theory-focused rather than theory-driven. By choosing this practice based approach two challenges are addressed: The *first* is theoretical. It argues that the shift from globalised to constitutionalised international relations has generated global constitutionalism as a new phenomenon and a new subfield in the social sciences. The *second* is methodological. It involves an innovative theoretical and methodological perspective insofar as it seeks to engage the three heuristic approaches of global governance, world society studies and global constitutionalism through theoretical triangulation (Wiener 2010a).[10]

To conceptualise constitutional quality beyond the state, it is suggested to theoretically engage global constitutionalism with two other interdisciplinary approaches that extend across the boundaries of international relations theory *strictu sensu*, namely, the world society and global governance approaches, respectively. Both were conceived as interdisciplinary efforts to comprehend cross-border activities. The proposed research places these two approaches on the corners of a conceptual triangle, adding global constitutionalism as the third corner position. All three approaches share a hybrid existence between theoretical approach and social phenomenon. Theoretical triangulation places global constitutionalism on one of the three corner positions of a triangle in addition to the world society and global governance

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[9] See Wiener (2011) Constitutionalism Unbound, University of Hamburg, unpublished research proposal, on file with author.

[10] This approach stands to be substantiated e.g. with regard to further specification of research objects, methodologies and the normativity focus as cross-linkage through the research process during the *preliminary funding period*.

approaches, respectively (see **Graph 1**). This methodological framework draws on the method of triangulation (Flick 2004; Hoffmann 2006). The leading assumption is that all three corner positions share an interest in pluralism[11]. All three approaches share the characteristics of being heuristic and offering a theoretic reaction to social phenomena. The triangular approach enables interaction about theoretical positions among the three corner positions of a triangle (Wiener 2010a; Wiener 2010b). It enables openness towards an interface of innovative options while avoiding a fall-back into paradigm battles or short-lived methodological innovations that are often framed as a new 'turn' in international relations theory.

Graph 1: Theoretical Triangulation
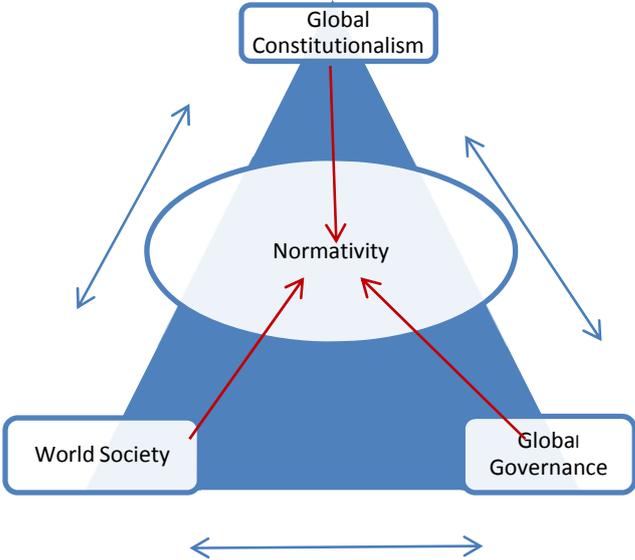
While research is always expected to generate innovation, the particular emphasis on the principle of reflexivity as an organizing principle for interdisciplinary interaction works with the assumption that background information and future perspectives are enacted through communication (Gadamer 1960). The outcome of that communicative process depends both on the input and on the procedure. With a view to future joint research it is proposed to involved experts from three different but related fields to generate the best possible *input*; in addition, it seeks to facilitate a special – interactive – *procedure* that is most conducive to raising key questions about global constitutionalism as an emerging field in the social sciences. The latter requires specific fine-tuning: Even though reflexivity has provided the

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[11] (Beck and Grande 2007) (Bogdandy 2008; Tully 2008a; Tully 2008; Halberstam and Stein 2009; Zürn 2010) (Walker 2002; Fischer-Lescano and Teubner 2006; Kennedy 2006)

background for philosophical and social science reasoning in international relations theory,[12] traditionally, international relations theory (including European integration studies) has covered new theoretical ground by way of 'paradigm battles' or 'new turns' that left established theories to one side in the process of claiming new territory (Waever 1996; Wendt 1999). By contrast, the proposed methodology of theoretic triangulation seeks to bring in views from three leading heuristic approaches so as to find a common ground. Note, however, that this 'common ground' is distinguished from the constructivists' strategic move towards the 'middle-ground' (Adler 1997; Checkel 1998) by a pronounced interest in the whole range of theoretical questions. That is, in distinction from the constructivists' focus on ontology (compare the critical position by (Kratochwil and Ruggie 1986), theoretical triangulation includes both ontological and epistemological arguments.

The concept of theoretic triangulation allows for an interactive engagement with theories that share the interest in theorising dynamics of institution-building and social practice in relation with border crossing and community formation on a global scale and which are open towards interdisciplinary interaction which is considered as a necessary condition for putting the principle of reflexivity into practice. Thus, the *world society approach* includes sociologists, lawyers and political science studies of international relations (Fischer-Lescano 2005; Albert 2007). Concepts of world society are understood in a broad sense as relations among state and non-state actors including individuals. They range from the more normatively oriented English School to world society approaches including both Stanford School type structural approaches and Luhmanian concepts of functionally differentiated world society (see an overview e.g. in Albert Ch. 2 (Bull 1977; Albert 2002).

The *global governance approach* was originally coined by the observation of "governance without government" (Rosenau and Czempiel 1992). It was fuelled by concerns about how to re-establish the balance between civil society and the state, on the one hand, and how to regulate policy and politics in the absence of government (Zürn 2000; Zuern and Joerges 2005). Work that ensued from this observation has included lawyers and political scientists with an interest in establishing legitimacy through efficient steering and regulation mechanisms (Kohler-Koch 1998). In turn, *global constitutionalism* begins from the observation that global norms offer less political and legal stability than assumptions about liberal communities would suggest (Finnemore and Toope 2001; Wiener 2008; Brunnee and

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[12] (Habermas 1989; Bourdieu and Wacquant 1992; Wenger 1998; Guzzini 2000; Risse 2000; Gadamer 2010 [1960]; Adler 2011; Brunnée and Toope 2011; Hansen-Magnusson 2011)

Toope 2010). The innovative reference to constitutional theory allows for more substantiated discussion of the dialectic between threat and possibility of global constitutionalism.

In sum, according to the proposed approach, conceptual discussions are guided by a reflexive approach to allow for critical reflection of each collaborator's own standpoint at any time. To that end, it is proposed to work with the approach of triangulation with an innovative twist: Different from *methodical* triangulation which is a well-known qualitative method in the social sciences *theoretic* triangulation proceeds by situating approaches at the corner points of a triangle (see Wiener 2010). From this position a joint theoretical perspective is elaborated based on *reflexivity* as a common principle of interaction, on the one hand, and 'normativity' as a joint research focus on the substance of international order (Bourdieu and Wacquant 1992; Howse and Teitel 2011). In this case, the interface consists of a shared interest in theorising normativity in international relations based on pluralist mid-range theorising as opposed to grand theory paradigm battles. This interface reflects the more empirically focused insights advanced by new institutionalism, on the one hand, and the more normative leaning insights of cosmopolitanism. Identifying the detailed theoretical potential from the interface remains to be explored through both interdisciplinary discussion and empirical research targeting policy fields that reveal changes towards *enhanced constitutional quality* in the international order. Such fields involve among others human rights, security policy, environment and development policies, respectively. For now, the interface is taken to provide a shared – if contestable – reference frame.

Conclusion

Following the practice approach to norms, the meaning of constitutional norms and principles depends on the way normative structures of meaning-in-use are enacted. While regulatory practices establish the formally valid constitutional frame of a political arena, for instance, the national political arena (reference point: *ius gentium*, or the nation-state), the distinct interpretations of constitutional substance is only detectable by reference to cultural practices of day-to-day interactions in context. As constitutionalism spreads beyond the nation-state borders, often carried by individuals, it is the reference to the cultural practice of constitutionalism which allows for an assessment of how constitutionalism works, and, more importantly with the current situation of 'constitutionalism unbound' whether it works at all. With this question in mind, the paper proposed theoretical triangulation from the three corner points of global governance, world society and global constitutionalism as an interdisciplinary endeavor to address global normativity.

Typically, global constitutionalism or its pre-runners emerge in the environment of international organisations and reflect the need to put innovative regulatory or principled practices into place. For example, the EU, the WTO and the UN have been among the first contexts where constitutionalism has become a common institutionalised feature with the intention to 'check' world trade policy, environmental policy, human rights policy or post-conflict policy (Dunoff and Trachtman 2009, Bogdandy, Tomuschat et al. 2009). All these changes reflect the shift from globalised towards constitutionalised international relations. In the process, the constitutionalisation of international relations has occurred in a relatively spontaneous and little coordinated manner. Politically, this development reflects a situation of constitutionalism that is unbound, *i.e.* lacking the familiar – modern - constitutional reference criteria, and therefore requiring some sort of regulatory and normative effort to put things in order.

As a consequence the regulatory practices of constitutionalism that had been found to dominate over customary practices in the constitution of modern states (compare Tully 1995, Tamanaha 2007, 10) now appear to be subordinated in comparison with the customary practices of international law. This development raises a number of questions about the balance between law and politics beyond the state. While this balance is heavily weight towards legal studies at this stage, the paper presented the 'Constitutionalism Unbound' project as an attempt towards re-establishing the balance between law and politics in the global realm with an effort to theorise global normativity based on problem-oriented theorising. Addressing normativity includes both empirical research which focuses on *mapping* the largely law-based debate on global constitutionalism in order to make it accessible to political scientists, on the one hand, and subsequently a critical discussion about strategy and possibility in *shaping* global constitutionalism, on the other. The paper's three sections are developed as sign-posts towards that endeavour.

References

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