


BOOK SYMPOSIUM

## A field day with Fritz: introduction to the Symposium

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(Received 30 July 2020; accepted 17 September 2020; first published online 28 December 2020)

### Abstract

The *Status of Law* begins with the suspicion ‘that “law” might have become the problem rather than the solution, and this problem requires further analysis’. Given that law is a social construct, Kratochwil invites us to turn to the sites where this construction takes place. To bring the many constitutions and contestations of law to the fore, he conjures theoretical sparring partners to engage in nine meditations. The genius of this Symposium consists of inviting nine colleagues, each engaging with a different meditation, and inviting a tenth colleague to add this introduction as a way to engage the engagement. By doing practice on practice the Symposium does full justice Kratochwil’s move towards looking at the practice ‘in the middle of things’. The resulting field day with Fritz is a piece of intellectual mastery compiled by ‘spirited members of the republic of letters’ that carries the reader along on a journey that reveals and addresses Kratochwil’s suspicions about the problem with law. In the end, we know more through sharing the problem and partaking in the joy of addressing it.

**Keywords:** International Law; International Relations theory; Kratochwil; norms; practices; praxis

### ‘And the craic was good’<sup>1</sup>

The *Status of Law* begins with the suspicion ‘that “law” might have become the problem rather than the solution, and this problem requires further analysis’.<sup>2</sup> Given that law is a social construct, Kratochwil invites us to turn to the sites where this construction takes place. To bring the many constitutions and contestations of law to the fore, he conjures theoretical sparring partners to engage in nine meditations. The genius of this Symposium consists of inviting nine colleagues, each engaging with a different meditation, and inviting a tenth colleague to add this introduction as a way to engage the engagement. By doing practice on practice the Symposium does full justice to Kratochwil’s move towards looking at the practice ‘in the middle of things’. The resulting field day with Fritz is a piece of intellectual mastery compiled by ‘spirited members of the republic of letters’ that carries

<sup>1</sup>Van Morrison, Coney Island, lyrics: <https://www.azlyrics.com/lyrics/vanmorrison/coneyisland.html>; ‘What’s the craic?: what’s up or what’s happening?’

<sup>2</sup>Kratochwil 2014, 2.

the reader along on a journey that reveals and addresses Kratochwil's suspicions about the problem with law. In the end, we know more through sharing the problem and partaking in the joy of addressing it.

Pending on the allocation of norm-generative practices, norms acquire contingent meanings-in-use. These are meaningful to some but not to all who are affected by a norm, hence the importance of zooming in on contestations about norms that 'touch' all, yet are only 'approved' by some. This distance between ideal and practice-based meanings raises deeper issues about access to norm-generation and change and about grounding normative legitimacy at a plurality of local sites in global society. This introduction reads the Symposium's engagements with Kratochwil's nine meditations as a series of interactions about the leading theme of the *Status of Law*. While each engagement has been undertaken at a different site, all refer to the wider social science context.

The decision to work with 'meditations' rather than 'demonstrations' emphasises the preference for pragmatism over paradigm battles that has always inspired Fritziens.<sup>3</sup> This focus is not lost on Bueger, who applauds the choice of format and the focus on 'praxis'.<sup>4</sup> The format also advances another subtler, albeit crucial, endeavour, namely, forging the conceptual link between 'norms' and 'practices' in global society. The contributors come towards Kratochwil's logic of inquiry 'in the middle of things' from quite distinct academic standpoints.<sup>5</sup> Each generates their meanings-in-use of the norms that matter for international relations (IR), thereby bringing Kratochwil's critical pragmatist logic of inquiry to life.

By placing his theoretical inquiry in 'the midst', Kratochwil also frames a place where IR scholars of distinct theoretical convictions may reconcile. Against the backdrop of Kratochwil's shaping impact on constructivism, this focus allows for addressing and overcoming the fabricated limitations set by opposing logics of inquiry, for example, by formulating a common research question. As Onuf notes: 'What happens when we speak? How do we get from speaking as an activity, a normative practice, to "the role and rule of law" in today's world?'<sup>6</sup> As this introduction argues, Kratochwil's book takes the critical constructivist project that sought to 'establish' the middle ground<sup>7</sup> further by illuminating the political potential of a more 'radical' constructivism<sup>8</sup> that leads beyond the confines of 'regulatory' constructivism that has proven unable to address the ethical values<sup>9</sup> that define the quality of norms.

### Setting the scene<sup>10</sup>

Vilaça sets the scene for 'further drama' by presenting the 'meditations' as a sequence of encounters, each of which is staged by Kratochwil among theoretical sparring partners.<sup>11</sup> His engagement picks up from the critical pragmatist logic

<sup>3</sup>Kessler 2016, 238; Kratochwil 2016.

<sup>4</sup>Bueger 2021, 547.

<sup>5</sup>Kratochwil 2014, 41; see also Onuf 2021 and Kurowska 2021.

<sup>6</sup>Onuf 2021, 528.

<sup>7</sup>Christiansen, Jorgensen, and Wiener 1999.

<sup>8</sup>Kessler 2016, 236.

<sup>9</sup>Erskine 2013.

<sup>10</sup>Compare Vilaça 2021.

<sup>11</sup>Ibid., 553.

of inquiry that begins ‘in the midst’. We are thrown ‘in *media res* and we quickly find ourselves in a *dramatic predicament*’.<sup>12</sup> This sets also the scene for this introduction to engage the engagements with Kratochwil’s meditations. It appreciates the distinct frames of mind that are brought to the fore in the respective individual efforts to understand and make sense of Kratochwil’s endeavour and shed light on the tools applied by each engagement – even if that requires breaking the spell with a Foucauldian wand as in Onuf’s text.<sup>13</sup> While the engagements share Kratochwil’s interest in grounding international law in societal settings where politics and power work, they differ regarding how this groundedness ought to be achieved through looking at the constructive force of practice (as his pragmatist take on practice suggests) rather than by branching out into sociology (as suggested by the constructivist turn in the 1990s). Here the trajectory towards *The Status of Law* and the purpose of practising ‘meditations’ is relevant.

In the *Millennium* forum Kratochwil explains that he originally wanted to emphasise the concept of ‘meditations’ by putting the term into the title of the book. ‘(T)he theme of “Meditations” was supposed to convey the search, the working through of a problem, rather than defining and operationalising it, or building a model, as has been the standard procedure of the epistemological project informing social science’.<sup>14</sup> By not disclosing this presupposition, generations of students of law are likely to assess the book against their respective legal paradigms, and IR theorists will try to dissect some moral wisdom to add to IR theory’s often normatively thin theoretical frameworks. In vain, of course, for Kratochwil is not one ‘to play ball’.<sup>15</sup>

Instead, the meditations reveal his affinity to a place in the uncomfortable ‘midst’, as all engagements note, albeit with different degrees of comfort. As Kurowska notes, *this* is Kratochwil’s most distinct logic of inquiry.<sup>16</sup> It involves a ‘systematicity of inquiry which starts with the identification of the problem *in situ*, necessarily in “the midst of things”, and proceeds with the application of contextually appropriate tools, thus making possible contextually appropriate judgments’. Onuf agrees and contends that ‘[t]here is always a *somewhere*, and it is foundational. It makes human agency, choice in the face of others’ choices, and agents’ goals the place to start, albeit in time, in the flow, in the middle. It takes self, selves and world as given – (...) by the circumstances making us all what we are. *This is the ontology of choice for social constructivists*. In no way is it beholden to some vacuous methodological quarrel over what can be seen’.<sup>17</sup> And yet Kratochwil is not ready to say so, complains Onuf: ‘I do not doubt that Kratochwil knows this. In Meditation 1 at least, he chooses not to say so, I believe because he reserves the term *ontology* for an age long past’.<sup>18</sup>

Playing ball may have led some constructivists to ‘usurp’ the middle-ground, but this move came at the cost of losing critical edge.<sup>19</sup> Clearly not the craic Fritz is

<sup>12</sup>Ibid., 552.

<sup>13</sup>Onuf 2021, 527.

<sup>14</sup>Kratochwil 2016, 280.

<sup>15</sup>Kratochwil 2016, 279 on Wendt’s falling for just that; see also Jackson 2008.

<sup>16</sup>Kurowska 2021, 540.

<sup>17</sup>Onuf 2021, 526 (second emphasis added).

<sup>18</sup>Ibid.

<sup>19</sup>As Kratochwil 2016, 281 writes: ‘I had started in the past (with Onuf and others) a discussion on constructivism in the midst of the regime debate, which, I felt, left many open questions, as the subsequent

after. With meditations in the ‘midst’, Kratochwil indulges the ‘cracks’,<sup>20</sup> proving the provocative and carefully probing approach to both International Law and IR theories and theorists. As Kessler summarises, Kratochwil’s ‘reference to “Meditations” ... is re-appropriated from Descartes and turned against the Cartesian ideal of “demonstration”’.<sup>21</sup> And the present Symposium’s engagements with Kratochwil’s meditations reveal a spectrum ranging from sharing and embracing his verve for constructive critique (if not quite the guts), to remaining somewhat suspicious spectators (even if in awe of the great mind). The following zooms in on the Symposium’s engagements.

### Embracing vs. eschewing the ‘midst’

Traisbach begins his *engagement* by quoting a core concern that brings him to locate the practice of the law ‘in the middle of things’. He highlights Kratochwil’s claim that ‘[w]e do not need a “truer” description but a clarification of how we actually proceed when we use norms and relate them to actions. ... [T]o understand what the law *is*, we must comprehend what it *does*, namely how it functions’.<sup>22</sup> And then he discloses some disquiet about beginning ‘with the practice in the middle’. As Traisbach notes, ‘[a]lready here we may pause and ask whether the actual use of norms can really tell us more than a particular story of how law functions. Can we really understand what the law *is* and *does* when we look at how we use norms? We probably end up with a conception of law that is less complex and less plagued with theoretical impasses – which is, admittedly, no small feat – but it is likely also less “useful”’.<sup>23</sup> By contrast, Peltonen notes quite the opposite, for he hears Kratochwil say ‘do the best you can’.<sup>24</sup> Put into perspective, a meditation with Kratochwil’s discourse ‘*alleviates perhaps some anxiety*. Yet, other anxieties emerge. This meditation requires one to unlearn much of what has been drilled into our western way of thinking for the past centuries. Here, some of Siddhārtha Gautama’s teachings seem more relevant than those following from the western Enlightenment’.<sup>25</sup>

Kratochwil’s practice-based understanding of how we know and generate knowledge reflects much of the practice-based literature that engages with norms, their emergence and change, and the effect this process has on transformative change.<sup>26</sup>

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usurpation of the ‘middle ground’ and the interdisciplinary dialogue concerning the intersection of international law and international relations demonstrated’. Moreover, ‘it is true that “constructivists” frequently lose their critical edge and buy into the common beliefs and ideologies of progress, norm-cascades, big data, or whatever. Unfortunately, such “short-cuts” in reasoning, which are propped up as explanations, but actually rely on dubious analogies or teleological phantasies, prevent us from actually analysing why institutions “work” or “fail”’, *ibid.*, 287.

<sup>20</sup>The ‘crack’ metaphor reflects the groundedness of contestation theory. It represents the starting point for sensitising reading to allocate contestations about breaches of norms at a plurality of local sites in global society. See Leonard Cohen’s *Anthem* ‘There is a crack in everything. That’s how the light gets in’, see Wiener 2018, 1.

<sup>21</sup>Kessler 2016, 238, citing Kratochwil 2014, 39.

<sup>22</sup>Kratochwil 2014, 54.

<sup>23</sup>Traisbach 2021, 531.

<sup>24</sup>Peltonen 2021, 583.

<sup>25</sup>*Ibid.* (emphasis added).

<sup>26</sup>Lechner and Frost 2018.

Yet, not all are comfortable with a logic of inquiry that begins with praxis. For example, Traisbach reveals some discomfort about the lack of prescriptive clarity which he perceives to be enhanced by the absence of disciplinary boundaries. He therefore suggests borrowing from ‘comparative politics’ in the hope that the distinct comparative methodology could ‘eschew ideological battles and grand theories’.<sup>27</sup> To those familiar with the battleground in comparative political science, this proposal will raise the spectre of variable-wielding political scientists. In a similarly critical appraisal, Onuf warns against the promises of positivism and offers a portion of wholesome scepticism noting, ‘[m]any of the things that scientists would like to observe directly cannot be observed in principle, no matter how sophisticated our visual aids. Things have names, but naming forces or relations does not make them things’.<sup>28</sup>

That is, Kratochwil’s foible to ‘accept the mess as part of the game and as a necessary price in order to get to the “interesting problems” or to what Wittgenstein called “perspicuous representations”’ does not appear equally attractive to all contributors.<sup>29</sup> Some prefer a certain order of things – supposedly offered by (international) law. While Kratochwil claims that this approach ‘allows us to “go on” instead of being caught in theoretical and epistemological conundrums that we try to “solve”’, Traisbach asks sceptically ‘But go on to where?’ To Traisbach, this intervention is likely to leave lawyers adrift – in need of firmer instructions. ‘Yet we are somewhat left alone with what these insights into the flexibility of norms “mean”’.<sup>30</sup> He therefore highlights a scaffolding that might be provided by ‘borders’ claiming that a ‘central purpose of these borders and limits is to establish, defend, or alter decision-making competences. Borders are always about delineating “who decides”’.<sup>31</sup> In turn, both Kratochwil and Onuf are highly sceptical about the purpose of borders. Especially when separating disciplines they impose boundaries on knowledge. Interdisciplinarity is not the answer, however, as Onuf notes because ‘[p]eople in different disciplines talk past each other; when they get together, “heated debates” give way to “mutual boredom”’.<sup>32</sup>

Sikkink echoes the preference for conceptual clarification and possibly a different logic of inquiry. The point is highlighted by her engagement’s focus on the concept of norms in IR theory, noting, ‘I would have preferred to see him take on the actual content of human rights law and point to which of these rights in particular he finds delusional’.<sup>33</sup> Kratochwil’s point, however, is not – and never was – to elaborate on the sociological development and effect of the taken-for-grantedness of a norm socially constituted through habit, and socially recognised as ‘good’ by members of a given community, to be therefore implemented by norm entrepreneurs who recognise their forward-looking responsibility.<sup>34</sup> His focus has been meaning-making through practice. When speaking of ‘practical application’, Sikkink

<sup>27</sup>Traisbach 2021, 534.

<sup>28</sup>Onuf 2021, 525.

<sup>29</sup>Traisbach 2021, 532.

<sup>30</sup>Ibid., 533.

<sup>31</sup>Ibid., 534.

<sup>32</sup>Onuf 2021, 523, quoting Kratochwil 2014, 32.

<sup>33</sup>Sikkink 2021, 575.

<sup>34</sup>March and Olsen 1989; Finnemore and Sikkink 1998.

insinuates the implementation of a particular norm by concrete policy-making or politics. Yet, Kratochwil's meditations invite looking at the constitution and contestation of normative meanings-in-use through practice.

Quite different from Sikkink's call for more hands-on clarification of practical terms, or Westerwinter's wish that Kratochwil were to take him by the hand and point out 'where and how to look for answers',<sup>35</sup> Welsh welcomes Kratochwil's abstract critique: 'Refreshingly, he feels no burning desire, let alone obligation, to determine the "correct" notion of rights that would command wide respect, but rather accepts that such debates do not have to end. Indeed, he insists that we should not want them to'.<sup>36</sup> And, she concludes, 'if Sikkink's goal is to provide inspiration for continued human rights activism – this is her notion of human rights *politics* – Kratochwil's meditation on the "politics of rights" has a different objective. It dares to ask whether human rights themselves, propelled and sustained by anthropocentrism, are part of the problem'.<sup>37</sup> The point is confirmed by Sikkink's attempt to justify her activist roots and intentions which are inspired by Young's concept of 'forward-looking responsibility'.<sup>38</sup>

Welsh acknowledges Kratochwil's critical take on the way IR theorists address human rights.<sup>39</sup> She begins with Kratochwil's goal to 'contribute to understanding our predicament'.<sup>40</sup> That predicament boils down to a gap between the ubiquity of law and legal discourse – its dominance of 'the vocabulary for contemporary politics' – and its perverse effects and abuse.<sup>41</sup> If law has become so triumphant, Kratochwil asks, 'why is it that we do not seem to have realised the "progressive" promise we so ardently hoped for?'<sup>42</sup> Welsh sees what Kratochwil's analysis does, as 'his diagnosis cuts much deeper in two crucial ways: the first is his "archaeological" approach to examining historical episodes and sources in making the case for human rights as particularist rather than universal; and the second is his deftness in uncovering the practices that have been authorised or demanded in societies underpinned by a commitment to human rights'.<sup>43</sup> She summarises the critical pragmatist logic of enquiry by noting: 'In keeping with the broader method of the book, this meditation is described as an "interrogation of the discourse on rights" and a demonstration of how "rights talk" has produced unintended consequences – including the empowerment of actors who no longer have clear accountability (such as jurists—or what he calls "juristocrats"—and human rights "experts") and the simultaneous disempowerment of the individuals whose autonomy was meant to flourish'.<sup>44</sup>

<sup>35</sup>Westerwinter's disquiet is palpable: 'Kratochwil's meditation points us toward these questions but lacks reflections on where and how to look for answers. To address this gap, students of global governance need to develop research designs that allow for empirically investigating the effects of informal and formal modes of governance in a comparative perspective', see Westerwinter 2021, 565.

<sup>36</sup>Welsh 2021, 570.

<sup>37</sup>Ibid., 572.

<sup>38</sup>Sikkink 2021, 576.

<sup>39</sup>Welsh 2021.

<sup>40</sup>Kratochwil 2014, 25.

<sup>41</sup>Ibid., 1.

<sup>42</sup>Ibid.

<sup>43</sup>Welsh 2021, 569.

<sup>44</sup>Ibid., 569–70.

Likewise, Kurowska demonstrates how through careful reading it is important to 'hear' the meaning of Kratochwil's argument.<sup>45</sup> She stresses the importance of Kratochwil's point that, in legal reasoning, social theorising, and political decision-making 'something more is "going on"'. This "more" concerns acting in particular contexts and making contingently appropriate judgements, rather than applying an *a priori* general framework as a procedure that allegedly delivers adequate judgment regardless of the context. In this casuistic pragmatism, theory is not a salvation but neither is the reliance on "facts" which are but artefacts of context. Theories here are enactments of the quest for certainty and the pursuit of hierarchy, not accurate description or prescriptions.<sup>46</sup> 'Constitutionalisation is thought to elevate law above politics, but, through relegating politics to "lower" level not yet "regulated" by law, it may also mean the intensification of politics'.<sup>47</sup> At this point, Kurowska falls into precisely the trap that Kratochwil warns us against, that is, giving in to the temptation to rely exclusively on modern rather than on critical or pluralist definitions of constitutionalism in stressing the emergence of 'neat' and 'clear' constitutional terms. As critical global constitutionalism shows, these terms reflect just one of two large practices that are constitutive for the nomos, namely the regulatory practices, while leaving the customary practices that constitute the other half of the nomos out.<sup>48</sup>

### 'Wouldn't it be great if it was like that all the time?'<sup>49</sup>

Kratochwil wants us to 'engage' where the 'action' is. His book invites the readers to critically apply their knowledge about engaging the law to critically probe the contingent 'work' of the norms of international law and zoom in on the meaning that engagement generates. This Symposium demonstrates that Kratochwil's invitation to partake in this meaning-making 'field-day' works quite well. It even works with Onuf who muses on the one hand, 'Kratochwil seems to be engaged in an extended conversation with himself in the first instance, with a number of other people who also have had important things to say, ... but least of all with his readers'.<sup>50</sup> And on the other, he sees Kratochwil to be 'bewitching the world'. In true style, now armed with Foucauldian codes, a bewitched Onuf then writes at his very best about a meditating Kratochwil: 'Meditation is supposed to make people less anxious. *A meditative Kratochwil can only make them more anxious*'.<sup>51</sup>

So, some have become more and others less anxious through engaging with Kratochwil's meditations. To perceive him as a 'blunt' academic however, as some suggest (see Welsh's note about style), misses part of the performance.<sup>52</sup> This is of course not lost on Onuf who finds Kratochwil 'at his acerbic best' in places.<sup>53</sup>

<sup>45</sup>Kurowska 2021.

<sup>46</sup>Ibid., 539.

<sup>47</sup>Ibid., 541–2.

<sup>48</sup>Tully 1995; Wiener et al. 2012.

<sup>49</sup>Van Morrison, Coney Island.

<sup>50</sup>Onuf 2021, 523.

<sup>51</sup>Ibid. (emphasis added).

<sup>52</sup>Welsh 2021, 572.

<sup>53</sup>Onuf 2021, 524.



Instead, he is concerned with the rights predicament that must come to the fore to those who approach the power of international law critically and carefully. To inspire readers to do just that, Kratochwil engages in a series of mediations that invite us to engage with that predicament by using our academic tools as best as we can (no need to get anxious). The Symposium's engagements show precisely that: the ability and readiness to actually hear what Kratochwil is saying.

By engaging with the engagements, the readership of this Symposium will draw their own conclusions about the promises of international law (and the discipline of International Law) despite the predicaments that Kratochwil addressed so wisely and carefully. Yet, they must engage themselves to get to the bottom of it all. Indeed, 'Kratochwil is too smart to show us "the way" but he gives us tools to assess our journey and options – perhaps also by comparing our itineraries'.<sup>54</sup> And for that, the invitation is to start in the middle. That plunge must be taken individually. By offering their respective academic practice of embracing or eschewing the 'midst' which lies at the centre of Kratochwil's grounding engagement with (legal) norms through critical pragmatism, this Symposium nicely sketches the 'site' where to do precisely that: generate knowledge through engagement with others.

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