

NORMS AND THE NAP

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IN JAPAN, UMBRELLAS ARE COMMUNAL.¹ If it is raining when a man leaves a restaurant, it is socially acceptable for him to take any umbrella that happens to be in the umbrella stand by the exit. In America, if someone takes an umbrella that he did not put into the umbrella stand, it is considered stealing. Now, the Japanese are not actually stealing umbrellas any more than a garbage picker is stealing bottles that have been tossed into a trash can. When an American dumps something, he is indicating that he is no longer using it. It is abandoned. Similarly, in Japanese society, when a man puts his umbrella into an umbrella stand, he is indicating that his umbrella is available for others to take. An American visiting Japan might not know about this societal norm. Regardless, if he puts his umbrella into a stand he is unintentionally communicating permission to take it, just as if he had spoken a phrase in English that sounded like the Japanese equivalent of, “This umbrella is free for the taking.”

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¹ Mark D. West, “Law in everyday Japan: sex, sumo, suicide, and statutes” (Chicago: university of Chicago Press, 2005), p. 44n72: “My interviews of koban police suggest that many people distinguish umbrellas (and sometimes bicycles) from other objects. Umbrellas are often seen as a sort of fungible communal property, especially during downpours in Japan’s spring rainy season.”

Much work has been done to investigate how norms arise and what role they play in society.² Thus far, the focus has largely been on economics, effects on individual behavior, or the divergence of norms with the law.³ This paper studies norms from the perspective of ethical analysis, and toward an intuitive method of incorporating norms into libertarian conflict resolution systems. The approach taken is to analogize norms with communication. Then, by examining the effect communication can have when trying to resolve conflicts, the role of social norms in ethical problems can be better understood. More importantly, it becomes easier to resolve ethical problems where norms are a relevant factor.

I. Communication and the NAP

Deontological libertarianism is based on the non-aggression principle (NAP). However, there are different ways to define the NAP, each of which can lead to different conclusions about how to solve ethical problems. For this paper, the NAP is taken to simply state that no one should cause conflict, where conflict is when actions interfere with each other.⁴ Thus, for libertarians, ethical problems concern conflict and its causes.

For example, if A hits B, has A violated the NAP? There is not enough information to decide. If B wanted to be hit, then there is no conflict and the NAP has not been violated. If B did not want to be hit, then there is conflict, but we do not know who caused the conflict. If B suddenly jumps out of the shadows and A reflexively hits him in fear, then it is understood that B is responsible. If B is quietly reading a book and A walks up and hits him, then A seems to be causing the conflict. The general technique for ethical analysis is to first determine if there is a conflict. If there is, the second step is to determine who caused the conflict.

² Axelrod, Robert “An Evolutionary Approach to Norms”, *American Political Science Review*, 1986, Vol. 80, No. 4, 1095-1111.

³ Richard H. McAdams and Eric B. Rasmusen, “Norms in Law and Economics”, <http://www.rasmusen.org/published/Rasmusen-07-handbook.norms.pdf>.

⁴ Kris Borer, “Cause No Conflict,” *Libertarian Papers*, 2, 40 (2010), Online at: libertarianpapers.org: “Conflict is when individuals take mutually exclusive actions, i.e., conflict occurs when actions interfere with each other. A conflict resolution system must deny all, or all but one, of such incompatible actions. The initiation of conflict is termed aggression, and those who do so are called aggressors. The libertarian conflict resolution system resolves conflicts by denying any action that causes conflict. This is called the non-aggression principle (NAP).”

The difficulty is that, in practice, situations are often quite complex. As shown in the above example, failing to account for every relevant factor can make a situation ethically ambiguous, or worse, lead one to condemn the victim. One element that is often relevant is communication. In the last example, A seems to hit B without provocation. However, if B had told A to do it, then A is not ultimately responsible for the conflict. This falls to B because of what he said to A.

It can be beneficial for men to alert others of their actions because then everyone can take care to avoid causing conflict. Yet, anyone who does so also acquires responsibility for what he indicates. For example, suppose that there are three tiny islands next to each other, each large enough for one man to stand on and close enough for a man to leap from one to the next. Now, say A and B are on the first two islands.

Assume that neither wants to collide. If A jumps onto the third island, there is no conflict. If A jumps onto B's island, then there is conflict and it is A's fault. If both jump onto the third island at the same time, then both caused the conflict. Now, consider the case where A tells B that he is not going to jump onto the third island. Then, if they both jump onto the third island, A caused the conflict. Similarly, suppose it is dark and A tells B that he is going to jump onto the third island in five minutes, then B says that he is going to jump onto A's island in ten minutes. If A stays on his island and B jumps to it ten minutes later, then A has caused the conflict. So, communication can be used to coordinate actions, but can lead to different responsibility for a conflict even if the situation is physically identical.

II. Ethical Entrepreneurship

As we have seen, there are two steps in solving an ethical problem. First, determine whether there is a conflict. If not, then everything is fine and there is no need for further analysis. If there is conflict, the next step is to determine who caused the conflict. This technique can be used to analyze the appropriateness of potential actions. However, it is impossible to know the future, so a libertarian must speculate on the effects of any particular course of action.⁵ When contemplating the appropriateness of potential action, a

⁵ Ludwig von Mises, *Human Action: Scholar's Edition* (Auburn, AL: Ludwig von Mises Institute, 1998), p. 253: "[Entrepreneurship] is inherent in every action and burdens every actor... The term entrepreneur as used by catallactic theory means: acting man exclusively seen from the aspect of the uncertainty inherent in every action. In using this term one must never forget that every action is embedded in the flux of time and

libertarian must consider both how likely it is that conflict will occur, and how likely he is to be responsible for that conflict. If conflict is unlikely, he can proceed with confidence. If conflict is likely, but responsibility is not, then he can assume this risk with a clear conscience. If both are likely, then he will eschew the action.⁶

An individual knows what action he is taking, but there is always uncertainty surrounding what the result will be. This risk can only be mitigated through understanding. Using his knowledge of the world and reason, a libertarian can improve his ability to predict the effects of his own action.⁷ There is additional uncertainty about what actions others take and their effects. Predicting the effects of the actions of others leads to similar difficulties and solutions as your own. Yet, in the case of predicting what actions others are taking, there are further ways of reducing uncertainty. By communicating a man can get an idea of what actions others are, or will be, taking. It will be easier for him to avoid causing conflict by using what they say. He can rely on what they say because if they lie to him, then their action will likely be the cause of any subsequent conflict.

Suppose A is considering whether or not petting B's dog will violate the NAP. He initially thinks that B would not want him to, but after asking about it B says that it is okay. A finds it unlikely that B would say this unless he meant it, so A is now more confident that petting the dog will not cause conflict. Furthermore, A knows that even if there is conflict, it will not be his fault. In this way, communication helps avoid conflict through coordination of actions whenever two lives come into contact. Two people cannot walk through a door at the same time, but a simple "after you" allows both to pass.

Communication certainly has other purposes. Entertainment and learning are good reasons to communicate. However, coordination is a more fundamental activity. It allows for all the benefits of the free market to be

therefore involves a speculation. The capitalists, the landowners, and the laborers are by necessity speculators. So is the consumer in providing for anticipated future needs."

⁶ Kris Borer, "Risking Aggression: Reply to Block," *Libertarian Papers*, 2, 13 (2010). Online at: libertarianpapers.org.

⁷ Gerda Reith, "Uncertain Times: The Notion of 'Risk' and the Development of Modernity" *Time & Society*, 2004, Vol. 13, No. 2/3, 383–402. Perhaps, ultimately, the most significant aspect of the notion of risk in contemporary society is not to be found in its epistemological status at all, but rather in its pragmatic role—in its ability to provide a guide for action within the world—whatever the 'reality' of that world might be.

realized.⁸ In contrast, a lack of coordination leads to conflict and chaos.⁹ Various forms of communication are used in human societies: body language, the spoken word, written and unwritten rules, etc. Individuals use these methods to let others know what they are doing, and then others are able to avoid stepping on their toes.

One particularly challenging method of communication is norms. A social norm is a standard behavior within a certain society.¹⁰ For example, in some societies when two people meet they shake hands. So, when you meet someone and he holds out his hand, he is telling you that he wants you to grasp his hand and shake it. Norms allow for individuals to quickly and easily understand the actions of others. They allow for assumptions to be made, for default models of behavior to be used and for more efficient cooperation.¹¹

Norms are an essential part of human society and so application of libertarianism to real world problems requires an understanding of what

⁸ Mises, *Human Action: Scholar's Edition* (1998), p. 273, "In nature there prevail irreconcilable conflicts of interests. The means of subsistence are scarce. Proliferation tends to outrun subsistence. Only the fittest plants and animals survive. The antagonism between an animal starving to death and another that snatches the food away from it is implacable. Social cooperation under the division of labor removes such antagonisms. It substitutes partnership and mutuality for hostility. The members of society are united in a common venture."

⁹ Mises, *Human Action: Scholar's Edition* (1998), p. 197, "Any kind of human cooperation and social mutuality is essentially an order of peace and conciliatory settlement of disputes. In the domestic relations of any societal unit, be it a contractual or a hegemonic bond, there must be peace. Where there are violent conflicts and as far as there are such conflicts, there is neither cooperation nor societal bonds."

¹⁰ Joseph P. Cannon, Ravi S. Achrol and Gregory T. Gundlach "Contracts, Norms, and Plural Form Governance," *Journal of the Academy of Marketing Science*, 2000, Vol. 28, No. 2, 180-194: "Social or relational norms are defined generally in the literature as shared expectations regarding behavior. The norms reflect expectations about attitudes and behaviors parties have in working cooperatively together to achieve mutual and individual goals."

¹¹ P. Wesley Schultz, Jessica M. Nolan, Robert B. Cialdini, Noah J. Goldstein, and Vidas Griskevicius, "The Constructive, Destructive, and Reconstructive Power of Social Norms", *Psychological Science*, 2007, Vol. 18, No. 5, 429-434: "After several decades of controversy over the role of norms in predicting behavior, the research has clearly established that social norms not only spur but also guide action in direct and meaningful ways."

norms are and how they relate to the NAP. Importantly, many ethical problems cannot be solved without understanding the norms involved.

III. Norms

A social norm is a convention for behavior.¹² Like language, individuals can use norms to communicate a lot of information very quickly, but only when used in the proper context. For example when two men meet, if one holds his hand out towards the other, then the other will recognize that he wants to shake hands. However, if a man holds his hand out to someone during dinner, they will likely be confused.

A more complicated example is that it is normal to pay a taxi fare after the taxi brings the passenger to his destination. When a man gets in a taxi, he does not spend time negotiating the details of what services the taxi driver will provide and how much he will pay. It is assumed that the driver will take him where he wants to go and then the passenger will pay a typical amount of money.¹³ This convention means that if the man behaves in the expected way, he is communicating that he wants a standard transaction.¹⁴ If the man wants something unusual, like a flat rate to the airport, then he needs to tell the driver that ahead of time.

Norms grease the wheels of society and the economy.¹⁵ They allow individuals to coordinate their actions more easily by making common interactions the rule and uncommon interactions the exception. Certain

¹² Steven N. Durlauf and Lawrence E. Blume, "Social Norms", New Palgrave Dictionary of Economics, Second Edition, dictionaryofeconomics.com: "Social norms are customary rules of behavior that coordinate our interactions with others."

¹³ A descriptive norm is when two or more individuals attach the same meaning to a given situational behavior. That is, they all recognize a specific meaning to a given behavior. Just as a certain understanding is associated with the words "help me up", so might the same meaning be associated with someone lying on the ground who reaches up at you.

¹⁴ Norms exist on larger scales as well. For example, when you die it is assumed that you want your possessions to go to your family. Since most people do want this to happen, it makes life easier for the majority of people. Others still have to make special arrangements, but this is what they would have done anyway without the norm.

¹⁵ Steven N. Durlauf and Lawrence E. Blume, "Social Norms", New Palgrave Dictionary of Economics, Second Edition, dictionaryofeconomics.com. "What economic purpose do they serve? The answer is that norms coordinate expectations, and thereby reduce transaction costs in interactions that possess multiple equilibria."

behaviors are expected, so there is no need for an individual to explicitly communicate what he is doing unless he is doing something abnormal. This usually saves time and effort. In this way, norms are a fundamental part of modern societies.¹⁶ Transaction costs would be too high for the market to function without them. Individuals would need to spend too much time inquiring into what the intentions of others are. “May I trade this money for that sandwich?”; “May I put the money into your hand?”, etc.¹⁷

This is not just theoretical; as such paralysis can affect anyone who finds himself in an unfamiliar situation with no norms to rely on. It is like being in a community without understanding the native language. This becomes apparent when a man visits in an unfamiliar society. He may not know the proper way of greeting others, eating food, or dressing. He may offend the locals by not following customs, or even find himself run out of town, all because he is communicating via norms that he does not understand.

Not all norms require overt behavior to communicate intent.¹⁸ For example, if a man’s heart stops, people in certain societies will assume that he wants to be resuscitated. If he does not want to be resuscitated, then he must to tell medical personnel ahead of time or wear a Do-Not-Resuscitate

¹⁶ Robert Axelrod, “An Evolutionary Approach to Norms”, *American Political Science Review*, 1986, Vol. 80, No. 4, 1095-1111: “Norms provide a powerful mechanism for regulating conflict in groups, even when there are more than two people and no central authority...Sociology seeks to understand how different societies work, and clearly norms are important in these processes...Economists are becoming interested in the origin and operation of norms as they have come to realize that markets involve a great deal of behavior based on standards that no one individual can determine alone.”

¹⁷ Imagine how laborious it would be to eat at a restaurant without norms. You would have to approach the property boundary and hold up a sign stating your desire to dine that night. You would then have to wait for instructions on how to enter the property, negotiate where to sit, what utensils to use, etc.

¹⁸ Henk Aarts, Ap Dijksterhuis, “The Silence of the Library: Environment, Situational Norm, and Social Behavior”, *Journal of Personality and Social Psychology*, 2003, Vol. 84, No. 1, 18-28: “When we are standing behind a bookshelf in a library, there is often no direct influence of others. Still, our behavior is affected by others (albeit indirectly): We keep the level of noise down as much as possible. In such cases, our behavior is guided by social norms. It is controlled by the activation of behavior that we believe other people expect from us.”

bracelet.¹⁹ Similarly, it is possible to communicate without moving. Sometimes silence conveys meaning, as does stillness. In some relationships, if a man asks his wife, “are you mad at me?” and she says nothing, then that means “yes”. Another situation might be when he says, “do not move, I am going to brush a spider on your back.” If she remains still, then she is communicating that she wants him to brush it off.

It cannot be assumed that silence and stillness communicate consent all the time, but only when norms have developed in a given relationship or society. When everyone involved understands the norms, then they can be relied upon. For ethical analysis, it is critical to understand when norms apply in order to understand when and why conflict occurs.

IV. When Norms Apply

What happens when someone does not understand norms? The same thing that happens when they do not understand language. They may send unintentional signals or misinterpret others. If a man goes to a foreign country and accidentally says in their native tongue, “please hit me,” he may get hit. Who is responsible? Clearly, he is. Similarly, if he puts himself in a situation in which norms apply, but he does not understand them, then he will end up being responsible for their abuse. Of course, he cannot be held responsible if someone tries to apply norms to him out of context.

Suppose that two men from different parts of the world, A and B, are both simultaneously stranded on the same island. A is from a place where holding out a hand indicates the desire to shake hands, while B is from a place where the same act indicates a desire not to be touched. When they first meet, B holds out his hand as a warning for A to keep his distance. A grasps B’s hand to shake it. There is now conflict, but who is responsible?

If they had been in A’s hometown, then B would have caused the conflict, because he tried to use his native norm in a place where it has a different meaning. If they had both been in B’s hometown, then A would have been responsible. A would have had no reason to believe that B was not operating under local norms.

Now, on a deserted island, neither can apply their native norms. There is effectively no communication via norms. In this case, A is violating the

¹⁹ Tom Tomlinson, Ph.D., and Howard Brody, M.D., Ph.D. “Ethics and Communication in Do-Not-Resuscitate Orders” *New England Journal of Medicine*, 1988, Vol. 318, No. 1, 43-46.

NAP by grabbing B's hand when B does not want him to. In this way, we can see how the same act can convey different meaning, and thus have different ethical implications, depending on the circumstances. In the same way as the statement "I'm going to kill you" might be a serious threat, a mild one, or simply a joke, the importance of an act can vary depending on the norms involved. Rothbard explains that the meaning one person associates with a given act is not always important in solving ethical problems.

Suppose, for example, that Smith sees Jones frowning in his direction across the street, and that Smith has an abnormal fear of being frowned at. Convinced that Jones is about to shoot him, he therefore pulls a gun and shoots Jones in what he is sure is self-defense. Jones presses a charge of assault and battery against Smith. Was Smith an aggressor and therefore should he be liable? ... When is an act to be held an assault? Frowning would scarcely qualify. But if Jones had whipped out a gun and pointed it in Smith's direction, though not yet fired, this is clearly a threat of imminent aggression, and would properly be countered by Smith plugging Jones in self-defense.²⁰

The point here is that resolution of the question depends on context and the norms involved. Even pointing a gun at someone is not always a credible threat, as this could happen during a safety demonstration, theatrical performance or in a situation where such behavior normally indicates friendship instead of a threat. On the other hand, could a frown violate the NAP? All action has the potential to do so, so it depends on the circumstances. Furthermore, just as not all communication is important for ethical analysis, not all norms are important. There are many norms that, when used to communicate, in no way lead to conflict.

Conclusion

A libertarian strives to live by the NAP. This powerful idea is simple in theory: do not cause conflict. However, the complexity of real life situations can make it difficult to know how to avoid causing conflict. The problem can be simplified by breaking it into two steps. First, determine if there is (or will be) conflict. Second, determine who is (or will be) ultimately responsible for the conflict. In this way it can be determined if any given action violates the NAP.

²⁰ Rothbard, Murray N. "Law, Property Rights and Air Pollution", *Cato Journal*, 1982, Vol. 2, No. 1, 55-99.

However, this process can be complex and a libertarian must use understanding to evaluate each situation. He needs to consider not only the physical acts that take place, but also what is communicated by the individuals involved. As we have seen, this communication is not always overt and can rely on modes of communication, such as norms, which may be imperceptible to outside observers and those who use them unconsciously. Yet, even knowing all of this, ethical problems are further complicated by the uncertainty involved in every action. To reduce this uncertainty, people communicate information about the actions they take and others can use this information to avoid causing conflict. Norms are one means of doing this.

Norms may seem like a great difficulty because of their implicit nature and the varying scope to which each individual norm applies. There are many details involved in determining the cause of any particular conflict, especially when trying to decide which norms are appropriate to any given situation. Fortunately, by analogizing norms with more overt forms of communication, their impact can be more readily understood.