**Original Paper**

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# From Worked-out Practice to Justified Norms by Producing a Reflective Equilibrium

**Abstract:** Reflective equilibrium is a proposal to justify general norms (not only moral norms) by adjusting them to a pre-systematic practice. The paper investigates the method of constructing a reflective equilibrium as a method for 'disappointed connoisseurs' with regard to alternative ways of justification. The example of no-smoking norms that have emerged within the last twenty years serves several purposes: It is used to illustrate under which conditions requests for justification arise and to investigate which role a worked-out practice can play in the justification of general norms. Additionally, the construction of a reflective equilibrium with respect to a no-smoking norm shows the necessity of implementing systematic considerations in the process of justification. The paper closes with some remarks concerning the characteristic quality of justification one can achieve by the method of reflective equilibrium.

## 1 "Please, Stop Smoking!"—A Dialogue as a Starting Point

Harry and Rudy are visiting Alan at his home. They have tea together in the living room. Rudy leaves the room for a few minutes, and when he comes back he sees that Harry is smoking a cigarette.

Rudy: Harry, please stop smoking!
Harry: Why?
Rudy: If I ask you to stop smoking in a room in my presence, you have to stop!
Harry: Why?

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Rudy: If someone asks another person to stop smoking in the same room as them, then that person has to stop.

Harry: But why should I accept this?

…

This short and admittedly artificial dialogue shall serve several illustrative purposes. First, it has a clearly *normative* character: Harry ought to do or rather ought to refrain from an action, i.e. he should refrain from smoking. Rudy chooses the speech act of an imperative to express his wish. Harry then asks Rudy for reasons in support of his demand. In reply, Harry gives a reason which consists in the citing of an *individual norm*.[1] His utterance takes the form of an if-then statement, citing the action which has to be done or omitted in the then-clause, and giving the conditions for doing or omitting this in the if-part. Harry is not satisfied and reasserts his request for a reason for this norm. Rudy then provides a *general norm* as a reason in support of the individual norm. The individual norm is entailed by the general norm, just by applying the logical rule of universal elimination: if something holds for every object (of a certain kind) then it holds for a particular object (of a certain kind). Accepting such a way of supporting individual norms by reference to general norms means agreeing to argue using normative propositions, i.e. it means accepting normative argumentation. Normative propositions can be reasons and they can be defended through reasoning. In the example, the general norm is a reason for the individual norm. The individual norm can be defended by using, among other things, the general norm.

The next question in the dialogue is predictable:[2] Harry presses his critical demands a step further and asks for reasons supporting the general norm.

The following reconstruction of the example dialogue is to illustrate the structure of giving reasons, beginning with the transformation of the imperative into the assertion that Harry is obliged to stop smoking in line 0. The presupposition here is a connection between asserting a normative proposition correctly and demanding the respective action correctly by an imperative. In order to show the correctness of an assertion one has to demonstrate that one can infer the asserted proposition from the relevant reasons, without being dependent on further assumptions.[3]

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**1** The terminology used here is explained in the following sections.

**2** It is predictable in a philosophical context such as this. In everyday life, many conversations in which a reason for a demand is sought end after the first reason is delivered.

**3** For the underlying pragmatic view on cognitive arguments and the respective terminology see Siegwart 2007, especially section 2, and Reinmuth/Siegwart this volume. Arguments are under-

[1] Argument I

| 0 | It holds | Harry ought to stop smoking. |
|---|---|---|
| 1 | Since | If someone asks another person to stop smoking in the room in the presence of the first person, then the other person ought to stop smoking |
| 2 | Thus | If Rudy asks Harry to stop smoking in the room in his presence, then Harry ought to stop smoking |
| 3 | Since | Rudy asks Harry to stop smoking in the room in the presence of Rudy |
| 4 | Thus | Harry ought to stop smoking |

The second column in the table contains the operators, which indicate the force or sort of each speech act. Lines 1 and 3 bring reasons into play in the argument. To speak of reasons means that their truth or rightness has already been established. The operator 'since' indicates the adduction of propositions, whereas the operator 'thus' indicates an inference. In line 2 the proposition is inferred correctly from the universal proposition in line 1. The proposition in line 4 is inferred correctly from lines 2 and 3.

Harry, the smoker who is the addressee of a request, does not challenge the correctness of the inferential acts, but the truth, or more generally the status of justification, of the reason, which is cited in line 1. The truth of the reason in line 3 is easily verified by simple observation; but the truth or rightness of the general norm has to be shown through other means.

Rudy could try to reason for the general norm by citing a more general norm which supports it.[4] The reconstruction of this reasoning in argument II takes the general norm from argument I as a thesis.[5]

[2] Argument II

| 0 | It holds | If someone asks another person to stop smoking in the room in the presence of the first person, then the other person shall ought to stop smoking |
|---|---|---|

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stood as sequences of cognitive speech acts. To be correct, each performance of a speech act has to be covered by its respective rule.

**4** A clear demonstration of this problem of the justification of norms can be found in e.g. Hoerster 2003, chapt. 3.

**5** The argument presented here contains abbreviated conclusions.

1   Since   If someone asks another person to stop performing an action
bringing about harm to the first person, then the other person
ought to stop performing the harming action
2   Since   Smoking a cigarette brings about harm to a person in the same room
3   Thus   If someone asks another person to stop smoking in the room in the
presence of the first person, then the other person shall ought to
stop smoking

The argument contains two adduced reasons. The first, in line 1, is the more general norm, the harm-principle.[6] The second, in line 2, is a law-like proposition concerning the empirical relation between smoking and harm. Yet these two reasons can also be challenged. At this point one has reached a well-known issue of metaethics:[7] even if one can support the general norm in the example by citing a more general norm, the chain of giving reasons will come to an end. One has to provide another way of identifying a general norm as a source of 'right' or 'true' normative propositions that finally demand that persons act in a certain way, although perhaps they do not want to.

The question to be posed here is how one can justify a general norm.[8] One type of answer—in a very rough categorisation—to the question why a certain norm is the 'right' norm appeals to a kind of natural law or to a law of reason. The rightness or truth of a norm can be 'found' as a given entity. It is not related to human interests or goals:[9] it is a 'justification by given law'. A proponent of such an approach might claim that the harm principle is justified in this way. It is given as a natural law and can be recognised as such by any reasonable person.

Another type of answer points in the opposite direction. The fact that a norm has come into force informally, i.e. that it has not been announced and enforced by

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**6** This more general norm is in some respects reminiscent of Mill's harm principle, which Mill employs to delineate those areas of conduct which should be free of collective decisions. Here the mentioned norm is employed as a more general norm than e.g. the no-smoking norm; see Mill 1977[1859], chapt. 4.

**7** But normativity is not confined to morality and moral philosophy. The diverse contributions to this edition illustrate the fact that human action is—often, at least—guided by norms. Besides morals and law, examples include measurement, logic and language.

**8** The underlying metaethical problems are discussed in some detail in Morscher 2012, chapt. 4; see also Hoerster 2003, chapt. 3, and Birnbacher 2007, chapt. 8 and 9.

**9** Approaches that justify norms with respect to hypothetical consent can be subsumed under this type of answer as well. Proponents of such approaches seek to justify norms by individual consent, although they frame the hypothetical situation of decision in such a way that all actual individual interests disappear. The justification is not under the control of those who ought to follow the respective norms.

'norm-makers', is taken as a demonstration of its rightness.[10] It is a 'justification by worked-out norms'. The general norm that demands someone stop smoking if so requested by another person can be seen as such a worked-out norm. There will be further illustration later on.

Both positions face severe criticism. Those who are not able to recognise the respective 'laws of nature' cannot be provided with further arguments; the person who tries to find out which norms she should accept is not provided with the opportunity to decide on her own grounds, because she cannot verify the supposed assertions. Those who request the justification of a norm and get the answer that the fact that this norm has come into force informally just makes it right, will probably raise their demand for justification again. They may object that this kind of argument represents an invalid conclusion from 'is' to 'ought', i.e. an inference from the fact that something is the case to the norm that it should be the case. The approach provides no further reasons and no critical force.

The idea of the so-called reflective equilibrium can be understood as a third means of justification. Its basic intuition is to justify general norms by adjusting them to a pre-systematic approved practice. With respect to approved practice the method resembles the justification by worked-out norms; but matching an established practice is only one element or only a first step, and further conditions subsequently have to be met. In order to be justified, a norm has to belong to a system that is consistent and is suitable to achieve certain goals.

In the following, the method of reflective equilibrium—in a specific adaptation—is presented as a method of justifying general norms. Five questions guide the presentation:

*What role does the informal origin of norms play in the justification of norms?*
*Do these processes of justification contain transitions from is to ought?*
*In which circumstances do requests for justification arise?*
*Which conditions have to be fulfilled in order to say that a general norm is justified?*
*What are the consequences of this understanding of justification?*

The paper is organised as follows: *Section 2* provides some preliminary work concerning the nature of norms and their relation to actions. *Section 3* builds on the smoking example, presenting the general norm that forbids smoking in many sit-

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**10** This kind of justification can be found not only with respect to norms regulating social behaviour (see Hayek 1964; Hume 1975, Book III, section 2; and for a general discussion Kliemt 1985), but also norms of rational action (Gigerenzer 2002). For a discussion of the latter see Hahn 2013, chapt. 8. Procedures of adaptation and models of ecology play an important role in these approaches.

uations as a norm that has come into force informally. The example serves as a model in two different ways: on the one hand it is employed to illustrate the circumstances in which demands for justification arise, and on the other hand it serves as an example to demonstrate the process of justification by using the method of reflective equilibrium (*section 4*). The *last section* summarises the results of this discussion with respect to the guiding questions.

# 2 Norms and Actions

## 2.1 Norms: Examples and Characterisation[11]

The utterances mentioned in the following are examples of norms, with appropriate contextual conditions presupposed.

[3] Examples of norms

(a) If someone asks another person to stop smoking in the same room, then the other person has to stop smoking.
(b) You have to keep your promises.
(c) Mary should offer her seat to the pregnant woman standing by her side.
(d) If one has inferred the conjunction A and B, one is permitted to conclude the proposition A and to conclude the proposition B.
(e) Beginners should fry salmon on the skin-side first.
(f) Our rooms are non-smoking rooms.
(g) Stealing is forbidden.

The norms vary with respect to the realm they regulate, their surface language, and their normative force, the latter ranging from permitted actions through obliged actions to forbidden actions. Nevertheless, differences aside, they share certain features which makes it plausible to subsume them all under the predicate 'norm'. Norms guide actions. *They specify under what conditions which agents should perform or omit certain actions.* Often, norms are not explicit in all of these respects. On the surface, example (f) seems to be a descriptive sentence which states a feature of certain rooms. But when uttered or written in certain circumstances, e.g. written on a sign in a hotel, the sentence has to be interpreted as 'For every person in every room of the hotel it holds: If a person is in a room of the

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**11** See Black 1962; Twining/Miers 2010, chapt. 3.1; Siegwart 2011; Hahn/Siegwart 2016.

hotel, then she is forbidden to smoke'. So, if a person is in a room of the hotel, then the person has to forbear from smoking. Everyday language thus provides many possibilities to express norms. But in situations in which one wants to be sure who is obliged to perform or omit an action, particularly in situations in which the addressee of a norm does not agree to his obligation, it is plausible to make all relevant factors explicit.

The reconstruction of the no-smoking example illustrates that norms can be individual norms or general norms, and that one can deduce an individual norm from a general norm by applying logical rules. 'Mary should offer her seat to the pregnant woman standing by her side' exemplifies an individual norm, i.e. it makes an action obligatory in one particular situation and is addressed to a particular person. 'Beginners should fry salmon on the skin-side first' is an example of a general norm. All agents who are beginners, in all situations in which they want to fry salmon, should fry it on the skin side first. In the following, 'norm' will often be used in place of 'general norm'. If individual norms are meant, this will be mentioned explicitly.

In sum, one can reconstruct general norms (or rules, a term which is used synonymously here) in an explicit formula.[12] Rules are universal if-then formulae. The universal quantification accounts for the generality of rules, which is twofold, with respect to agents on the one side and situations on the other. The *if*-part, the antecedent, gives the condition of the rule and specifies for which sorts of agents the following instruction to act holds. In the no-smoking example the condition is that an agent is in the same room with another agent and that the second agent asks the first to stop smoking. The agents are not characterised further. The *then*-part, the consequent, provides the mode of action. The formula contains a deontic particle—obliged, forbidden or permitted—and a formula, describing the action that has to be performed or omitted. For all such-and-such agents, for all such-and-such situations, such-and-such actions are obligatory, forbidden or permitted.

### 2.1.1  What Does It Mean That a Norm Is in Force?

If one wants to say what it means that a norm is in force, some preliminary determinations are necessary,[13] all of which concern the relation between agents and norms. A first distinction has to be made between ascriptions whereby an agent

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[12]  For a detailed analysis see Siegwart 2010, 42–44.

[13]  The distinctions that follow are taken from Siegwart 2011.

merely conforms to a norm, and those where he properly follows the norm. An agent conforms to a norm if the action he takes or omits is covered by the norm. Sam, who goes to a restaurant and orders the cheapest dish, a tomato soup, conforms in this single situation to a norm that prohibits eating meat. But in order to decide if he does so with respect to the norm one needs to know more about his beliefs and wishes. Sally, for example, who loves the taste of beef, but does not want animals to suffer, accepts a norm prohibiting eating meat. If she goes to a non-vegetarian restaurant and does not order a dish containing meat she follows the norm prohibiting eating meat. An agent who follows a norm acts according to the norm *and* does so *with respect to the norm*. Often, an observer can only state that an agent conforms to a norm, because he has no information on the agent's beliefs and desires.

The relation between acting agents and norms can also be approached via considerations of continuity. An agent follows (conforms to) a norm in either an isolated or a stable way. To stably follow a norm means to perform or omit the respective action of the norm in most of the situations the norm describes.

Two dispositions of agents should also be mentioned.[14] Someone *advocates* a norm if he cites the norm in a suitable situation, i.e. he expresses that an addressee of a norm should act according to the norm. Someone *accepts* a norm if he deems the norm right, which means that he will act according to the norm in (most of) the respective situations and would face 'inner sanctions' if he does not. If someone accepts a norm he also advocates the norm; the opposite does not hold.

Based on these characterisations regarding single agents one can specify what it means that a norm is in force. A norm or a rule *is in force in a collective* if and only if most of the members of the collective stably follow the rule and there is a practice of commenting upon rule-following and rule-breaking. Disapproval can also comprise physical sanctioning, as in the case of breaking the law. Using the characterisation above, this means that most of the members follow the rule in most of the situations which the rule describes—i.e. they perform or omit the respective action as required, and there are agents who comment on the rule-following or rule-breaking behaviour of others.[15] To say that a norm is in force always means that this norm is in force in a certain collective. So there may be sub-collectives in which a norm is not in force, and there may be sub-collectives in which a norm is in force which is not in force in the greater collective.

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**14** See Hoerster 2003, chapt. 2.
**15** With respect to rules that permit an action one would have to give further specifications. The deliberations here are confined to prohibiting and commanding rules. For considerations concerning permitting rules see Siegwart 2010, section 3.3, and with respect to empowering secondary rules see Hart 1994[1961], chapt. V.

There are different motives for following a norm. An agent may follow a norm in order to avoid sanctions (in a wider sense) which he would face if he broke the norm. Tom, who is not a vegetarian, but is accompanied by five vegetarians, decides to act according to a vegetarian norm—to follow the norm—('For all agents in all everyday situations, it is obligatory to omit eating meat') because he wants to avoid an expression of disapproval by his companions. To put it differently, and borrowing from H. L. A. Hart: Tom follows the norm for external reasons. Another motive to follow the norm consists in accepting it: the agent deems the norm right and acts according to it. Sally refrains from eating meat because she accepts the vegetarian norm and wants to act according to it.[16]

### 2.1.2  Two Origins of Norms Being in Force

Applying the characterisations of the last section, one can say that the norm that prohibits driving a car without possessing a driving license (for example) is in force in the collective of citizens in Germany. Most of the people driving a car possess a driving license and there is a practice of commenting when people drive a car without possessing a driving license. In addition, there is a practice of systematic sanctioning of those who break the rule. The norm that obliges agents to keep their promises is also in force in this collective (as well as in others). Most agents keep their promises in most cases in which they have given a promise. Cases in which someone has not kept his promise are an issue for disapproval.[17] By contrast, the rule that forbids all agents to eat meat is not in force in this collective. It is only a minority group within German society that forbears from eating meat.

Both the driving-license norm and the promise norm are in force, but this status of being in force has different origins. In the first case an authority has enacted the norm by an act, which is itself covered by a secondary rule (as Hart calls it). The promise norm was not enacted, but came into force informally, i.e. it was worked out by the interaction of individuals. Although it is a result of individual interaction, there is no individual who can control or impede its coming into force. If a vegetarian tries to bring a vegetarian norm into force in a society, he will find that he cannot reach this goal simply by advocating this norm. Most of the addressees of his general norm will not act in the way he wishes them to act. The fact that an

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[16] For a discussion of the motivations to follow norms see Hart 1994[1961], chapt. 5; Hoerster 2003, chapt. 2; Bicchieri/Muldoon, URL: http://plato.stanford.edu/archives/spr2014/entries/social-norms/.

[17]  The fact that most agents follow the norm does not preclude that there are agents who never keep their promises.

individual advocates a norm is not a sufficient condition to bring about a state in which most members of the respective community follow the norm. (Although advocating a norm is probably a necessary condition to bring the norm into force.) Any person who criticises the moral norms of a society, for example, will likely have this experience.

On the contrary, authorities that are empowered within a normative system can enact norms. Usually norms are promulgated in connection with sanctions for breaking the norms. In well-functioning legal systems these measures are sufficient to bring norms into force.[18]

If norms are in force that have an informal origin, the agents act according to the norm with respect to the norm. They know the norm—which does not imply that they can give an explicit formulation, but they do know in which conditions they have to perform or omit an action—and they know that it is in force, which also means that they know which sanctions they will have to face if they break the norm. The statement that a norm is in force in a collective implies rule-conforming behaviour on the one hand and a disposition to sanction norm-breaking behaviour on the other.

It is a remarkable fact that a norm can be in force which has not been enacted by any authority, but is nevertheless followed, advocated and accompanied by a practice of sanctioning. However, there is no guarantee that such conditions represent states of adequate adaptation which are immune to challenge; they indicate merely that a norm's coming into force in some way served the purposes of social interaction. But as soon as the norm is in force, a practice of sanctioning and commenting sustains this state and makes informal change difficult. If a practice of commenting and sanctioning exists, there also exist external reasons

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**18** It can happen that a norm does not come into force, e.g. because an unstable legal system does not have enough resources to ensure norm-following behaviour. It is enacted, covered by a respective norm and therefore valid, but it is not in force. The distinction between the validity of a norm in a normative system and its being in force (or "efficacy", as Hart calls it) is explained in Hart 1994[1961], chapt. 6, and Hoerster 2006, chapt. 6.

to follow the norm.[19] So ritual dietary rules can persist, for example, even though the circumstances that promoted their emergence have changed.

# 3 "Smoking Is Forbidden!"—The Informal Coming into Force of a Norm

## 3.1 From Smoking in Elegant Lounges to Outdoor Smoking

One can sketch the history of smoking in the 20th century as a transition from a state A, in which smoking in interiors is natural, to a state B, in which smoking in interiors that are not owned by the smoker is forbidden.[20] Or, to give a more vivid account, one can see the change from Marlene Dietrich and Humphrey Bogart sitting in elegant surroundings each with a cigarette, to the modern-day huddle anonymous smokers out in front of a bar, wearing warm clothes in winter.

Something has happened between these states, and the informal working-out of no-smoking norms has played an important part in this development. One can identify several phases in this process (remember: this is according to everyday experience, not as verified by an empirical investigation):[21]

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**19** Investigations into norms with an informal origin show that there are norms which are 'adaptive'—to follow them helps agents to reach their goals—but that there are also 'maladaptive' norms. "Norms could be sensible, just as functionalists in anthropology have claimed. However, the fact that they could be sensible does not mean that they are sensible. There are some well-studied examples, like the alkali treatment of corn, and there are many other plausible examples of culturally transmitted norms that seem to embody adaptive wisdom. However, as documented in Robert Edgerton's book, Sick Societies (1992), there are also many examples of norms that are not obviously adaptive and in fact some seem spectacularly maladaptive. Such cases might result from the pathological spread of norms that merely handicap the tolerant without doing anyone any good (and perhaps harm the puritans as well?). Or, they might result from antiquated norms that persist in a frequency above a large basin of attraction for tolerance, having lost their original fitness-enhancing effect due to social or environmental change." (Boyd/Richerson 2002, 294)

**20** The following passage presents the change in behaviour against smokers. This presentation should not be misunderstood; it does not claim to present the results of an empirical investigation, i.e. it does not deliver an explanation. Instead, it appeals to experiences the reader has probably had. For the distinction between empirical inquiries and everyday experience, see Kamlah 1973, 11–23.

**21** The example presents different states with different norms being in force, but provides no conjectures with respect to the mechanisms transforming one state into the next. Advocating a norm, forming expectations, imitation etc. will probably play an important role in an explanation.

*Period 1*

One can observe a practice of requests—'Please, stop smoking'—and fulfilling the request, i.e. the addressed person stops smoking. Additionally one can notice a practice of comment (e.g. "It is not acceptable that Harry should not stop smoking even though Rudy has asked him to do so."). So, one can ascertain a practice has worked out informally that can be described as covered by the following general norm I:

(I)   If a person asks another person in the same room to stop smoking, then it is obligatory that the second person stops smoking.

The underlying principle consists in the permission to smoke in interiors, *unless* someone requests its omission.[22]

*Period 2*

In the next period we can observe a tightening of the practice, characterised by the fact that it is not the person who feels disturbed by smoking who has to undertake an action but the person who wants to smoke. The latter has to ask if the others will permit him to smoke. This practice can be characterised as covered by the following norm II:

(II)  If a person wants to smoke in a room she does not own or inhabit and there is another person in that room, then it is obligatory that the first person asks the second person if she may smoke.

The underlying principle here is that smoking in interiors is forbidden, *unless* the other attendant persons permit smoking.

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Investigation of the example through research on cultural evolution would presumably deliver interesting results.

**22** Normative systems can be analysed with respect to underlying principles that either permit all actions that are not explicitly forbidden ('commissive principle')—as is the case with criminal law—or forbid all actions that are not explicitly permitted ('interdictional principle')—as is the case with chess. See Siegwart 2010, 35–40. In the example, the underlying principle with respect to smoking changes from a commissive one to an interdictional one.

Both periods are characterised by the fact that there is a practice of limiting smoking in the presence of other (mostly) non-smokers. But the rules that are in force have worked out or developed informally; they have not been established by an authority.

*Period 3*

This fact changes in the next period, which is characterised by the enactment of no-smoking rules in public areas, e.g. in public buildings. In these cases empowered authorities promulgate norms and impose penalties if persons break these norms. An example is the following norm III:

(III) In official buildings for all persons it is forbidden to smoke.

This official disapproval of smoking may have strengthened the already existing disapproval in private areas.

*Period 4*

Smoking in private rooms is further limited. One may describe the practice that evolved as covered by the following norm IV:

(IV) If a person wants to smoke and is in a room she does not own, then it is obligatory (or weaker: recommended) to go outside.

The underlying principle here is that it is forbidden to smoke in interiors, *unless* the owner or inhabitant of the room explicitly invites the smoker to smoke inside. The mere permission to smoke no longer suffices.[23] And the story presented here can be updated by citing legislation which even interferes with the rights of ownership, e.g. by declaring pubs, restaurants etc. as no-smoking areas.

## 3.2 Some Preliminary Lessons from the Example

The example, conceived as summarising the general experience in European or North American society, gives rise to some remarks with respect to the emergence of norms.

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**23** To say that a norm is in force always means that this norm is in force in a certain collective. So there may exist sub-collectives in which a norm as presented in period 4 is not in force.

First, one should notice that the emerging practice, e.g. in period 2, is already a *normative* practice. Agents who want to smoke in a room and who ask other attendant persons if they will allow them to do so, are not merely displaying a habit (as they would be if e.g. they went for a walk every morning), but are properly following a rule. They expect that others will express their disapproval of smoking in the room or will prohibit smoking outright. One can thus state that there is a practice of acting in a certain way as regards agents who want to smoke, and a practice of commenting, judging and teaching as regards the other members of the society.

Second, one can observe *interplays* between the informal emergence of norms and the formal establishment of norms by legislative measures. Periods 1 and 2 represent the state of a norm being in force that has emerged informally, so that one can interpret the formal establishment of a no-smoking norm in period 3 as a reconstruction or formal validation of the pre-systematic practice. The formal disapproval expressed by establishing the norm in turn reinforces the practice. It is not merely the formal norm which comes into force but a strengthened norm as represented in period 4. These general observations drawn from consideration of actual experience need to be the object of closer empirical inquiry. Such inquiry promises to enrich a field of research that has often focused exclusively on evolutionary processes, neglecting normative systems that allow for the formal enactment of norms and the possible interplays of these two processes in the way norms come into force.[24]

Third, one main purpose in presenting the example is to consider how far the fact that a norm has come into force informally is relevant for its justification. The example can help us to get an idea of under which circumstances a pressure to justify norms can emerge. If someone challenges the norm that is in force, e.g. in period 2, then he *does not accept* the norm. He might know that the norm is in force, which means that he will face sanctions if he breaks the norm, but still he does not deem the norm right. So pressure to justify norms stems, *inter alia*, from the fact that not all members of a collective accept the norm.

Another case in which a necessity can arise to justify norms is the *conflict of norms*. A norm that prohibits smoking in interiors, for example, can come into conflict with a norm that recommends that hosts accommodate their guests (including smokers).

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**24** See for example Boyd/Richerson 2002, who concentrate on cultural—informal—evolution. On the other hand there are reflections on the constitution of the social world; Searle, again, stresses the 'constructive' side of normativity, focusing on the possibility of *declaring* something as something, which has to be handled in a certain way (to declare something as money with all its implications is the prominent example here). See Searle 2010, chapt. 5.

The need to justify a norm may also result from the experience that there are situations in which the norm applies but its *application is not satisfying*. So, a person who accepts and supports a no-smoking norm could also come to the conclusion that it is not right to forbid smokers to smoke in a situation of extreme stress.

In sum, there are at least three types of situation in which the demand for justification arises: where not all persons accept the respective norm; where there is a conflict of norms; and exceptional situations in which the application is not acceptable. In what follows, it will be investigated, among other issues, whether appeal to the informal origin of a norm can provide a satisfying answer to these problems of justification.

# 4 The Idea of Reflective Equilibrium and the Justification of Norms

## 4.1 Reasoning for Imperatives and Justifying Norms

The above conceptual distinctions and the illustration of the emergence of no-smoking norms provide the means to analyse the dialogue from the beginning of the paper. For clarity, in the table below the utterances of Harry and Rudy are noted in the second and third columns, while the categorisation of the utterances in a comment is noted in the fourth. The chain of justification begins with Rudy's first demand that Harry stop smoking and ends with the last reaction to the request for justification by presenting a reflective equilibrium. In everyday life it will not often happen that someone goes through the whole process presented here. But in dealing with questions of justification in general one has to do so.

## [4] Argument III—commented

|    | Rudy | Harry | Comment |
|----|------|-------|---------|
| 1  | Harry, please stop smoking! |  | Demand to omit an action |
| 2  |  | Why? | Request to show the correctness of the demand |
| 3  | Because there is this general norm in force: If someone asks another person to stop smoking in the same room then the other person has to stop. |  | Showing that the demand is correct, because it is covered by a rule |
| 4  |  | But why should I accept this rule? | Request to give reasons for this rule |
| 5  | That is the rule that has evolved informally. |  | Referring to the fact that the rule has come into force informally. |
| 6  |  | But I do not accept this norm as a right norm, what are the reasons for it? | Request to give reasons for this rule |
| 7  | This rule can be inferred from a more general norm: If someone asks another person to stop performing an action which is bringing about harm to her, then the other person shall ought to stop the harming action. |  | Giving reasons for the rule: One reason is a more general rule and the other reason is the confirmation that smoking harms people. |
| 8  |  | And what is the reason for this more general rule? | Request to give reasons for this rule |
| 9  | This rule is evident! |  | Trying to provide justification by referring to evidence, natural law or law of reason. |
| 10 |  | I do not agree. I see no evidence. Smoking is really important to me. Such a rule interferes severely with freedom of choice. To me, the norm that persons should not be limited in their freedom of choice is evident. | Request to give reasons for this rule. Doubting the evidence and presenting an alternative evidence. |
| 11 | This rule belongs to a system of rules that covers (a part of) our practice, it is not *prima facie* inconsistent and it serves the goal to promote a peaceful and comfortable living together. |  | Justification by reflective equilibrium |

Some remarks are in place concerning the different activities Rudy practices to mark out the normative demands of no-smoking, in answer to Harry's requests. On the level of 'concrete' imperatives (line 1), the respective measure is to show that the imperative or its corresponding individual norm (as in line 1 of [1], argument I) is supported by a general norm (here: line 3). Or, conversely, one has to show that the concrete norm can be inferred from the general norm and the respective antecedent condition. On the next level, when there are doubts concerning the status of the general norm, as expressed here in line 4, one has two options: One can demonstrate that the norm can be inferred from a more general norm, or one can show that its status as a reason can be justified by other activities. Rudy chooses the second option in line 5; he does not refer to another, more general norm, but leaves the framework of arguments as a sequence of giving-of-reasons and inferences. He cites the fact that the norm, noted in 3, has evolved informally.

It turns out (in this example dialogue) that Harry is not impressed by this fact, which points to the issue (addressed in the previous section) of in which contexts the pressure to justify norms emerges. In line 6 Harry says that he does not accept the norm and wants to criticise it. If what is at stake is the critique and the request for justification of a norm, it does not seem very convincing simply to point to these norms and cite their coming into force informally.

Trying to fulfil Harry's request, Rudy chooses the other option mentioned above and shows that one can infer the no-smoking norm from (a rather weak version of) the more general harm-principle. This inference also implies the correlation between smoking and harming other attendant persons. Again, Harry is not satisfied and asks for justification of the harm-principle.[25] Rudy replies by applying a meta-ethical approach with reference to a 'given norm', pointing to the evidential status of the harm-principle in line 9. Harry again denies that this counts as evidence for him and puts forward a general norm which he deems to be evident, the norm that no one should be limited in his freedom of choice. The example illustrates that reference to evidence, or to natural laws, laws of reason or hypothetical consent, is an effort to finish a discourse too early. It does not provide an operationalization which is transparent and comprehensible. If the opponent does not agree with the alleged evidence, the proponent cannot bring forward further arguments without referring to the actual interests and goals of the opponent. Characteristically, however, the mentioned positions reject justificatory strategies

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**25** Doubting the postulated empirical correlation could be another way of proceeding.

that relate the justification of norms to e.g. actual interests or goals of individuals or groups.[26]

Rudy still wants to convince Harry and so he sets aside considerations of given laws, hypothetical consent and actual worked-out norms; instead he tries a more sophisticated justificatory strategy, one which starts with reference to a worked-out practice, and connects it to systematic considerations concerning the system of rules and the goals that regulative systems should serve. Rudy tries to show that the no-smoking norm belongs to a normative system in reflective equilibrium.

## 4.2 Reflective Equilibrium: An Approach to the Justification of Norms for 'Disappointed Connoisseurs'

Some interim results must be summarised: a situation in which a normative practice has evolved, is running smoothly, and is not criticised, does not represent a scenario of justification. Requests for reasons or for justification of norms arise when the status quo is deemed deficient. Examples of such deficiencies are the above-mentioned conflicts of norms, the fact that some agents reject or criticise norms, or the discovery that the application of a general norm results in unacceptable demands in particular situations. Further causes for justification are the wish to sanction norm-breaking behaviour in a systematic way, as via a legal system or the presentation of alternative norms.

The idea of justification by means of producing a reflective equilibrium is attractive for those who share the analysis of the dialogue above: in order to justify a norm, it is not sufficient to point out that it has emerged informally or that it is in some way evident. It is also attractive for those who are interested in a procedure of justification that fulfils the condition of transparency. The deficiencies of the options already mentioned render the idea of justification by the means of producing a reflective equilibrium appealing. Or, to put it in other words: the idea of

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**26** The refusal to deal with the actual interests of actual persons in an actual discourse and to rely on an external 'agency' instead can be found e.g. in Kant's *Groundwork for the Metaphysics of Morals*: "Everyone must admit that a law, if it is to be valid morally, i.e., as the ground of an obligation, has to carry absolute necessity with it; that the command 'You ought not to lie' is valid not merely for human beings, as though other rational beings did not have to heed it; and likewise all the other genuinely moral laws; hence that the ground of obligation here is to be sought not in the nature of the human being or the circumstances of the world in which he is placed, but a priori solely in concepts of pure reason, and that every other precept grounded on principles of mere experience, and even a precept that is universal in a certain aspect, insofar as it is supported in the smallest part on empirical grounds, perhaps only as to its motive, can be called a practical rule, but never a moral law." (Kant 2002[1785], 5)

reflective equilibrium is a method of justification for 'disappointed connoisseurs' (Wilhelm Kamlah). On the one hand, it avoids the mentioned deficits; on the other, it reduces expectations concerning the claims that can be made by showing that a norm is part of a reflective equilibrium.

In what follows the method of producing a reflective equilibrium shall be briefly characterised and then demonstrated by application to the no-smoking example.

### 4.2.1  Reflective Equilibrium

The basic intuition which underpins the reflective equilibrium approach is to justify rules by appeal to an already existing practice. But this reference to practice does not consist in simply adopting the norms that are in force. Instead, it takes a pre-systematic practice as a starting point, and then confronts it with rules that are extrapolations of the practice, demanding adjustments of both practice and rules. The suggestion goes back at least to the work of Nelson Goodman and John Rawls.[27] The latter, indeed, coined the term "reflective equilibrium". Nelson Goodman deploys the idea of justification by adjustment in the context of the justification of rules of induction; John Rawls applies it to justify the principles of justice. The very fact that these two contexts of use are so disparate should already indicate the wide potential scope of its application.[28]

Quotations from Rawls and Goodman shall illustrate the basic idea of this kind of justification:

> "This state of affairs I refer to as reflective equilibrium. It is an equilibrium because at last our principles and judgements coincide; and it is reflective since we know to what principles our judgements conform and the premises of their derivation." (Rawls 1971, 20)

> "A conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together in one coherent view." (ibid., 21)

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**27**  In philosophical literature it is quite fashionable to cite philosophers who lived long before Goodman's and Rawls' proposal, but who nevertheless also seem to apply the method of reflective equilibrium. The correctness of these ascriptions is not at issue here, but one essential point has to be stressed: the idea of reflective equilibrium, as Rawls and Goodman present it, is a proposal to justify norms and one of its characteristics is the revisability of *all* the elements that have to be adjusted—considered judgements *and* principles or practice *and* rules.

**28**  See e.g. Oliver Schlaudt's study (this volume) on the revision of units as a case study in producing a reflective equilibrium.

Rawls's version of reflective equilibrium displays the following elements: the single case judgement and the general norm have to be mutually adjusted, i.e. the pre-systematic considered judgements on particular questions of justice have to be adjusted to general norms or principles of justice. Neither judgements nor general norms are exempted from adjustment. Rawls denies the possibility of justification by self-evident premises. Besides this, the quotations also illustrate that the rules should compose a coherent system and that the reflective equilibrium should make explicit from which premises which judgements follow—or, to put it the other way round, which rules the respective judgements presuppose.

These elements are also part of the conception suggested by Goodman, although to these elements he also adds reference to the chain that reaches from showing that a particular conclusion is correct to the justification of a rule.

> "How do we justify a deduction? Plainly by showing that it conforms to the general rules of deductive inference. [...] Yet of course, the rules themselves must eventually be justified. But how is the validity of rules to be determined? Here again we encounter philosophers who insist that these rules follow from some self-evident axiom, and others who try to show that the rules are grounded in the very nature of the human mind. I think the answer lies much nearer the surface. Principles of deductive inference are justified by their conformity with accepted deductive practice. [...] A rule is amended if it yields an inference we are unwilling to accept; an inference is rejected if it violates a rule we are unwilling to amend. The process of justification is the delicate one of making mutual adjustments between rules and accepted inferences; and in the agreement lies the only justification needed for either." (Goodman 1983[1955], 63f.)

The proposals by Rawls and Goodman have engendered widespread discussion.[29] Despite their admitted defects and rather open-ended character, one can still take them as the core of a modified version which seeks to overcome their limitations.[30] This pragmatic variant takes up the basic intuitions from Rawls and Goodman: i.e. it takes up the proposal to construct consistent systems of norms by being guided by pre-systematic practice. The main modification consists in adding a pragmatic component: this presupposes that normative systems shall guide actions in a way that certain goals are achieved. Goals are intended states of the world. Goals (and perhaps further criteria such as simplicity or degrees of enforceability of systems) provide orientation in the process of adjustment between the rules considered and hypothetically applied, and the accepted demands or constraints of the pre-systematic practice. A normative system is in a state of rational reflective equilibrium if the system is consistent (or, weaker, has not been proven inconsistent),

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**29** Hahn 2000, section A.

**30** Hahn 2000, section C; 2004.

covers (a part of) a pre-systematic practice and renders achievable the goals which are aimed at through the system. A rule is justified if it belongs to a normative system in rational reflective equilibrium.

In what follows these sketchy features shall be illustrated by application to the rules cited in the no-smoking dialogue.

### 4.2.2 Constructing a Reflective Equilibrium with the No-smoking Rule

The diagrams below present the procedure of construing a reflective equilibrium. The steps shall be commented upon in what follows.

[5] Constructing a reflective equilibrium I
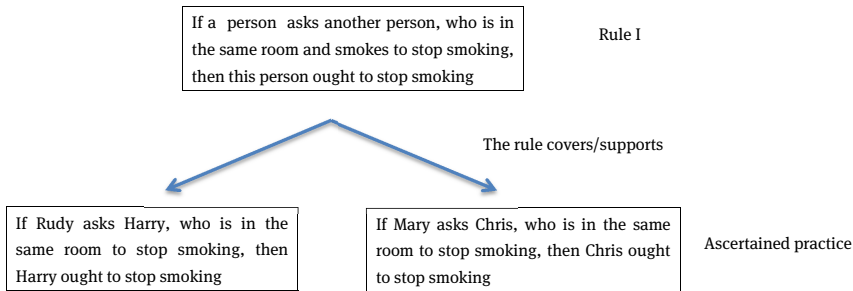


The procedure begins by ascertaining the worked-out practice. The respective events are that persons ask other persons to stop smoking. In most cases, the persons in question do stop smoking. In addition, there is a practice of judgement and comment in which agents approve when people stop smoking after having been asked to do so, and disapprove the opposite behaviour. The individual norms that can be reconstructed as part of the ascertained practice are noted at the bottom of the illustration.

The next step consists in proposing a norm that would cover this practice. This rule, I, is noted above. The general norm supports the individual norms, i.e. one can infer the individual norms by application of the rule of universal-elimination to the universal proposition. Adding the respective antecedent leads to requests for action, e.g. "Harry shall stop smoking", which are not noted in the illustration. The relation between the general norm and the individual norms is a relation of inferability and support *within a system of norms*. But there is also another relation

that holds *between* the suggested general norm and pre-systematic practice. The general norm covers the practice, i.e. that in application of the general norm one gets the same instruction as one gets in the pre-systematic practice.[31]

If this were the whole story, one would stop here. But the worked-out practice and the general norm covering the practice are the objects of doubt or rejection by some agents. Thus, the demonstration that the requests of the pre-systematic practice are covered by a respective general norm is not convincing, unless the norm itself is justified. Further analysis generates two insights: First, the no-smoking norm can be supported by a more general norm, the harm-principle. This support presupposes that smoking is identified as an action which harms others.[32] Second, Harry's objection reveals that the harm-principle conflicts with another norm, i.e. the norm of non-restriction of freedom of choice.

[6] Constructing a reflective equilibrium II
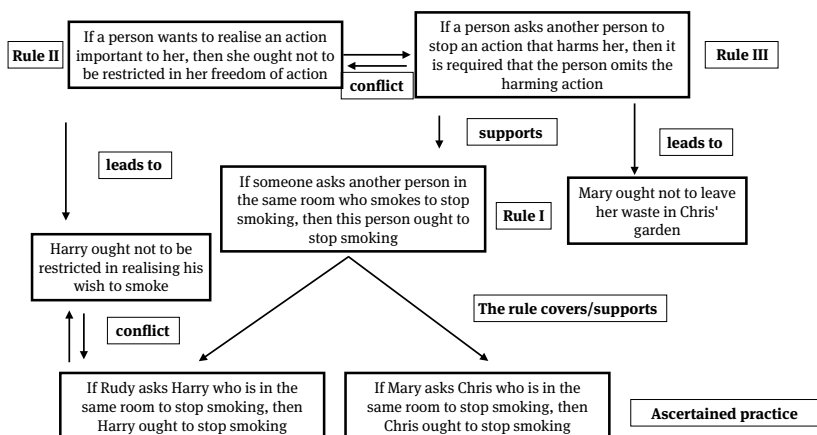


The conflict arises if one derives an individual norm from the latter norm—as shown on the left of the illustration—and compares it with the individual norms

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**31** The mentioned pre-systematic practice is not part of the picture but is only *reconstructed* in the individual norms at the bottom of the diagram. Further analysis shows that a proposed general norm usually covers only a part of the pre-systematic practice on the one hand, and on the other hand usually goes beyond pre-systematic practice.

**32** The example shows the necessity of integrating descriptive elements in normative arguments. The analysis of rules as universal conditionals resembles this structure and makes inferences from and of normative propositions possible. See the reconstructions above ([1] and [2]).

derived from the no-smoking norm (being in agreement with pre-systematic practice), noted at the bottom: there is a conflict between not being restricted in smoking and stopping smoking when asked to. So, one can observe a conflict between the two rules and a conflict between the rule of non-restriction of freedom of choice and the pre-systematic practice identified so far.[33] Now, the request of justification goes beyond only one rule. What is at stake now is the justification of a system of norms.[34]

The 'classical' formulations of reflective equilibrium request that we adjust 'practice' and 'rules' or 'judgements' and 'principles' in such cases of non-accordance. But what factors provide guidance in these adjustments? What criteria make it possible to evaluate one adjustment as better than another? The pragmatic version of reflective equilibrium proposes to construct *rational reflective equilibria*. Using the plural form here should already destroy any illusion of uniqueness. There can be several equilibria: i.e., in the final analysis there can be different justified norms. A rational reflective equilibrium holds if the respective rules not only cover a part of a pre-systematic practice, but also form a system that has not been proven inconsistent and makes certain goals or purposes achievable. The criterion of consistency is a negative criterion, as it merely sorts out those systems that are inconsistent. It makes sure that a system does not contain both a norm that forbids smoking (or forbids keeping a promise) and a norm that obliges smoking (or obliges keeping a promise). But the criterion of consistency provides no positive selective force. The goals that shall be achieved with normative systems accomplish this task instead.

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**33** Probably, the pre-systematic practice contains also incidents that are covered by the non-restriction rule, i.e. there are conflicts within practice.
**34** One can assume that not only must the two mentioned rules be considered, but also further rules and empirical grounds. For the sake of simplicity the scenario here is restricted to these two rules.

[7] Constructing a reflective equilibrium III
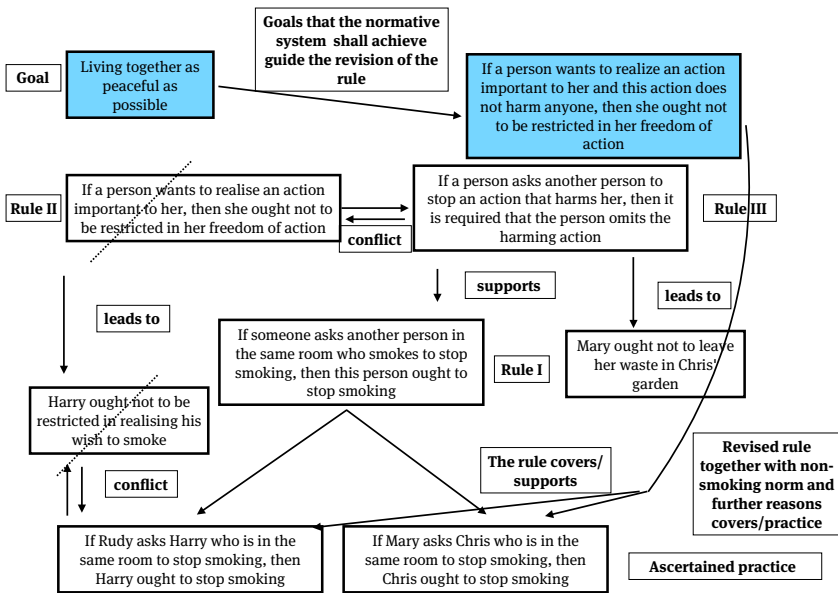


The—stipulated—goal that should be achieved by applying the normative system in the example consists in promoting comfortable or peaceful coexistence (noted on the left side at the top of [7]). So one has to examine the conflicting rules with respect to the question of if and how far they contribute to realising that goal. This requires separate considerations what would happen if only one of the conflicting rules were established. One has to apply the respective rule hypothetically and compare the results. As it is necessary to adduce further reasons to derive individual norms from the general norms, the presumed descriptive reasons, e.g. that smoking harms attending persons, also belong to the result that has to be judged. So, one can only compare 'packages' of norms and other reasons with each other. The considerations of how far a set of norms and other descriptive correlations contribute to achieving a goal also comprise forecasts about to what extent a rule will be followed. According to the reflection on rule-following presented above (2.1), one has to distinguish two motives agents may have to follow a rule, i.e. in order to avoid sanctions, and because the agent is convinced of the rightness of the rule. Predictions about the achievability of goals will have to rely on evidence of the acceptance of rules on the one hand and on the enforceability of rules by or-

ganised sanctioning on the other. The statements about acceptance will probably refer, at least in part, to the experience the worked-out practice provides.

Applying these procedural steps to the example, one has to derive individual norms from the harm-principle and from the norm of non-restriction of freedom of choice. The latter norm, for example, leads to the request that Harry not be restricted in his wish to smoke (noted on the left of [7]). Other results from hypothetical applications might be that someone not be restricted in his wish to wear certain clothes, play the piano all the time, drive very fast, etc. Hypothetical applications of the harm-principle lead to the obligation on Mary not to leave her waste in Chris's garden (noted on the right of [7]) or the request that Mary not play the drums in her little apartment at night. The experience from already worked-out practice enters once again: Which individual norms, derived from the respective general norms, match with (which part of) the practice? With respect to the norm of non-restriction of freedom of choice, one may expect that individual norms would be derived which do not match worked-out practice. Not every wish of an agent to act in a certain way is accepted by other agents. On the other hand, the results of the hypothetical application of the harm-principle will often depend on the identification of harm.

The result of this testing of norms will probably reveal a mixture of covering the practice in part, going beyond the practice by requesting or permitting actions that are not part of the worked-out practice, and not capturing actions of the practice and so staying below the worked-out practice. In order to deal with this expectable and indeed normal situation one has to take into account the goal one wants to achieve by applying the system. How do these different sets of rules and further descriptive correlations contribute to peaceful coexistence? This goal may guide a revision of the norm of non-restriction of freedom of choice—the reason being that the unrestricted realisation of wishes may lead to conflict in living together. People may feel harmed or disturbed by others. The revised rule additionally contains the restriction that the action the person wants to perform does not harm another person (noted top right of [7], the original rule II is deleted, as noted by the dotted line on the left of [7]). The revised norm is in accordance with the ascertained practice noted at the bottom, and does not lead to an individual norm that permits smoking for Harry. Thus, the conflict between the two rules is solved by revision of one rule, and the individual norms that are derivable do not conflict with the ascertained practice.

The method of reflective equilibrium often does not determine a unique result. There may always be other ways—other reflective equilibria—which can resolve the identified conflict. But the possibilities are restricted by the goals one wants to achieve by applying a normative system. (One may also change these goals, but one has to do so explicitly.) Principally, one might think of a revision

of the harm-principle in order to solve the conflict, e.g. 'If a person asks another person to stop an action harming others and this action is not one of highest importance to the first person, then the first person should stop the action'. But—at least in this concrete example—one may have doubts that this revision is likely to contribute to the achievement of the desired goal. It seems more plausible to restrict the meaning of 'harm', so that not every action that makes somebody feel a bit uncomfortable is covered by the harm-principle.

[8] Construction of a reflective equilibrium
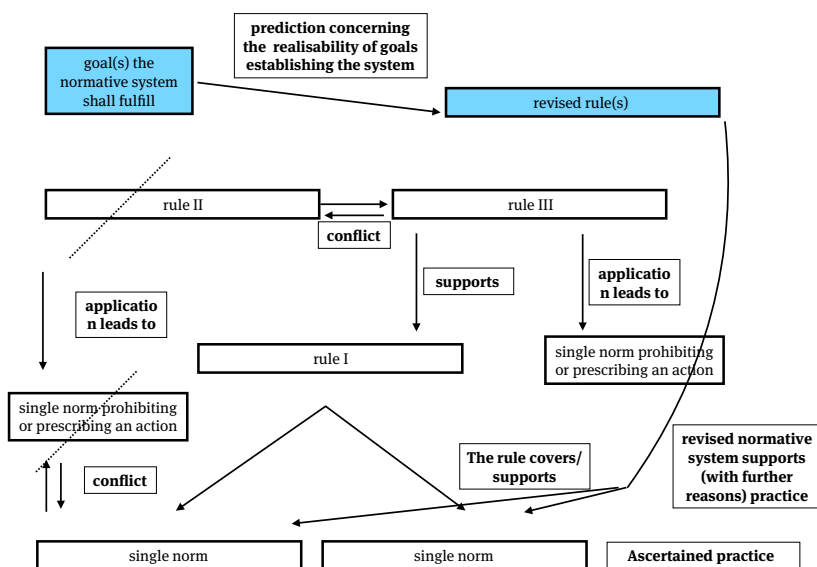


The example contains only a few rules, which makes it possible to illustrate the procedure in a simple picture. The worked-out practice has to be identified and ascertained, a procedural step that already contains a kind of reconstruction. Rules have to be formulated from which one can infer individual norms that match the identified practice (here: rule I). One has to look for more general norms that, together with other reasons, support the more specific rule (here: rule III). One has to check if there are other rules that are in conflict with these rules (here: rule II). The conflict between rule II and rule III is mirrored or repeated in the practice, since the individual norms of the ascertained practice conflict with the individual norms derived from the rules. If conflict is identified, one must look at the goals that are supposed to be achieved by applying the normative system, which often

have to be determined first. The next step consists in examining which sets of rules and other correlations lead to which systematic practice—individual norms—and evaluating these sets with respect to pursued goals. A revision (or, in the language of reflective equilibrium, an adjustment) can solve the conflict, while saving parts of the worked-out practice and at the same time contributing to the achievement of the goals.

If a normative system is in rational reflective equilibrium, the following conditions are met: The system is (in the ideal case) consistent (or at least: not proven inconsistent). The goals the system is intended to achieve are supported by the rules, i.e. the goals will (probably) be achieved by acting according to the rules. The rules cover (a part of) the worked-out practice. Rules that belong to a system in rational reflective equilibrium are justified.

# 5  Striking the Balance: Reflective Equilibrium, Worked-out Practice and Justification

In what follows, some features of the method of reflective equilibrium as an option for 'disappointed connoisseurs' in matters of justification shall be summarised. The questions raised in the introduction will guide the résumé.

*In which circumstances do requests for justification arise?*

Pressure to justify arises e.g. in situations in which parts of the informal practice are not accepted by some agents or when there are normative conflicts that can be reconstructed by conflicting rules or when an informal rule does not lead to an accepted result in particular cases. Trying to give a justification for a rule by reference to a worked-out practice in these circumstances is unrewarding, as the acceptability of the practice itself is partly in question. Further prompts to justify norms are the wish to establish a systematic system of sanctions for norm-breaking behaviour, or a proposal of alternative norms.

*What role does the informal origin of norms play for the justification of norms?*

Worked-out practice is a point of departure, not an endpoint. The method of reflective equilibrium therefore differs from 'evolutionary' or 'ecological' approaches.[35] There is, admittedly, a similarity which consists in the fact that practice is used as an 'anchor' for considerations concerning the justification of rules; but, in con-

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**35** Gigerenzer 2002; Schurz 2011; Hayek 1964. For a sophisticated view on the status of adaption with norms see Boyd/Richerson 2002.

trast to evolutionary approaches, informal practice is also the object of directed adjustment and change. The method of reflective equilibrium incorporates the insight that there are (at least) two ways in which rules can come into force in a collective. One is the informal emergence of a rule, which is emphasised by evolutionary approaches; but there is also the possibility of enforcing a rule in normative systems, as for instance via the legal system.[36]

If it is possible to change practice by establishing new rules, arguments that restrict justification to states that are the result of adaptation are not convincing. They presuppose that the fact that a rule has come into force informally shows that this state is the result of individual actions that are directed by individual goals. To see the emergence of a norm as an evolutionary process of this kind at least supports the conjecture that it resembles an adaptation to a certain constellation. This view does not account for criticism of practice and conflicts within the practice, these being the reasons behind requests to justify the informal rules.[37]

The method of reflective equilibrium accounts both for this criticism and the status of worked-out practice. The latter is seen as an indicator that the practice serves some desired goals. Criticism and conflicts are thus seen as indicators that the practice is in some way defective. The analysis of practice, rules and conflicts, as well as the explicit consideration of the goals which a normative system shall serve,[38] jointly make it possible to construct a normative system with transparent features. This explicitness again provides an opportunity to take an enlightened decision by committing oneself to a system.

This last point leads to the question: who performs the procedure of constructing a reflective equilibrium? Two scenarios have to be mentioned here (though there may be more that are also relevant). The example of no-smoking rules presented above shows an interplay between the informal emergence of norms and the formal setting of norms. Considerations that precede passing a law can be in-

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**36** Hart characterises law as a system of primary and secondary rules. Secondary rules are e.g. rules that empower political institutions to set new rules, to change them, etc. See Hart 1994[1961], chapt. 5.

**37** Research on the emergence of norms as well as on the sustaining of norms would be useful. The informal emergence of a norm may be the result of individual goal-directed actions, but to maintain this order requires actions that are guided by the norm, actions that sanction norm-breaking behaviour, and actions that teach the norms in question. These actions are no longer goal-directed in the sense of case-by-case reasoning in order to realise individual goals. See also Lahno, this volume.

**38** At this point in the analysis the practice may enter again: in order to assess whether certain goals are achieved by acting according to a set of norms, one will again have to look at existing practice to get some hints.

terpreted as a construction of a reflective equilibrium:[39] there is a practice that is in some respect deficient. Referring to the example, one can imagine that most people act according to the norm and stop smoking when they are asked to, but there are still enough people left who do not follow the informal rule. So a typical application of the reasoning behind reflective equilibrium can be performed in the process of legislation. In the case of the no-smoking rule an already existent normative system is changed with reference to—in this respect—pre-systematic practice. But it is also possible that a normative system is established for the first time out of pre-systematic practice. The agents of the process of legislation are the ones who perform the procedure of building a reflective equilibrium.

Another scenario in which the method can be deployed might be where there is an individual who is confused with respect to the norms he accepts. Rudy, who deems the no-smoking rule sensible, may be worried by Harry's insisting on freedom of choice and might try to come to an overall normative view or, to frame it in the language of reflective equilibrium, he tries to construct a rational reflective equilibrium. This can be taken as a case of affirming or reassessing one's individual system of moral norms.

*Does the presented procedure of justification contain transitions from 'is' to 'ought'?*

No—not in the sense of drawing a conclusion. The objects of justification are general norms. These norms are suggested as norms that cover an existing practice. But this practice is already normative: it concerns actions that ought to be performed or omitted. The performance of an action that must be omitted is an issue of comment and evaluation. What is 'codified' are not habits but an informal normative practice.

If one has constructed one or several reflective equilibria, one has developed one or more normative systems with different sets of rules and other correlations, covering different parts of a practice and achieving different goals. At this point, the systems contain normative sentences, but the particular system itself has no normative force—as long as it is not enforced. It is enforced if someone—the legislator in one scenario and the individual in the other—commits himself to one or several goals and chooses the reflective equilibrium appropriate to achieve these goals. The commitment includes accepting and advocating the normative system, including the willingness to sanction rule-breakers. The necessity of committing oneself to a normative system reveals the decisionistic rest this approach to justification contains. If someone shares the goals, it is appropriate that he adopt the system and advocate its norms. But this is a particular act, a decision. By taking

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**39**  See Kuhlen, this volume, for situations in which norms are promulgated with respect to practice.

this decision—i.e. the decision to adopt the normative system—he commits himself to it.

*Which conditions have to be fulfilled in order to say that a general norm is justified?*

A general norm is justified if it belongs to a normative system in rational reflective equilibrium. Since there may be several reflective equilibria, there are also alternative normative systems containing alternative rules that can be justified and may be not compatible in practice.

*What follows from this understanding of justification?*

The method of reflective equilibrium provides an understanding of justification which is relative: rules are justified relative to a normative system possessing certain features. These features are, in the first place, consistency and goal-achievement. As different goals often require different norms, the justification is relative to these goals. Those who pursue certain goals are justified in advocating a normative system in reflective equilibrium which contains these goals.

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