The Reflective Nature of Moral Rights

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Abstract

Some legal rights are paired to moral rights (but most legal rights do not institutionalize moral rights). Dual-status rights reflect the value of individual autonomy in the Kantian tradition. In the nineteenth century the Will Theory sought to analyze these rights by relating them to the autonomy of the will. Today dual-status rights are analyzed as deontic constraints in Anglo-American moral philosophy. In this paper I try to provide an anatomy of deontic constraints. I explain how deontic constraints are linked to two different forms of personal separateness: agent separateness and patient separateness. I also offer an expressive theory of deontic constraints. This theory appeals to a second-tier deontic distinction: the distinction between a moral system positively permitting the violation of rights and a moral system merely allowing it. An expressive deontic moral theory should combine rights against others and duties to oneself in order to express both facets of personal separateness. In general terms, the Kantian theory of moral duties got it right.

The concept of rights originated in Medieval jurisprudence and soon extended to moral and political language. Natural rights were initially invoked in theological disputes about poverty, as well as in conflicts in international law and, later, in the seventeenth and eighteenth centuries, they became a rhetorical weapon in the hands of liberal revolutionaries. Thus, for centuries it was common to express both moral and legal demands in the garb of rights. As a result of this dual usage, moral and legal rights are usually thought to be closely related concepts. Either moral and legal rights are two species of the same genus, or legal rights are moral rights recognized by positive law. Accordingly, philosophical inquiry about rights covers both moral and legal rights. Thus, Joseph Raz states in espousing his own theory of rights: «My purpose here is […] to defend my approach, which regards moral, rather than legal, rights as the model for a general explanation of the concept». And the editors of a book on rights begin the Introduction in this way: «The three principal essays in this book debate a number of issues concerning the fundamental nature of legal and moral rights». Against the orthodox strand, I argue that a successful unified account of moral and legal rights is unworkable today. In the seventeenth and eighteenth centuries, the situation was different. Moral and legal rights were then essentially associated with the value of personal autonomy. Both the Kantian theory of the public right and the Will Theory are accounts of autonomy rights, moral and legal, respectively, though the

1Tuck 1979; Horwitz 2012 and Coyle 2012.
2Raz 1996, 238.
3Kramer et al. 1998; italics added.
4See: Spector 2013.
latter theory is only fragmentary in that it does not spell out the value of autonomy.\footnote{Spector 2009; also included in Bix and Spector 2012; Spector 2007.}

Naturally, the Will Theory focuses on property rights and contract rights, which are the exemplars of rights grounded on the value of individual autonomy. During the nineteenth century, the classical paradigm of legal rights was gradually replaced by a paradigm centered on interests and social goals.\footnote{See, for instance, Kennedy 1976. Karl Marx argued that classical rights were ideological instruments to protect the interests of the bourgeoisie. I will not address the ideological functions of the value of individual autonomy in this paper, because I believe that, despite its possible ideological applications, it is a value worth pursuing in all economic and political settings.}

Legal rights were no longer a way of recognizing the status of autonomous agents but instruments for enhancing aggregate welfare or promoting the interests of certain groups – e.g., the workers. Though the Interest Theory attempted to account for this new conception of legal rights, it is at odds with those features of moral rights that answer to the classical paradigm. For instance, the Interest Theory suggests a balancing approach to rights that can justify the sacrifice of the autonomy of some individuals for the sake of maximizing collective goals.

Whereas the Will Theory tries to capture the features of rights that are related to autonomy, the Interest Theory seeks to accommodate the widely different kinds of rights that modern legal systems recognize and their various justifications. Therefore, it is impossible to provide today a unified analysis of moral and legal rights that do full justice to the diverse and changing ideas with which legal rights are associated. In this paper I defend an understanding of moral rights as fundamental nonconsequentialist, deontic principles. At the basic level of morality, rights are best understood as deontic constraints.\footnote{I do not mean that rights cannot be asserted in the context of a consequentialist theory. In fact, utilitarian theories try to provide foundations for rights. But the rights in question are not «moral rights» in the sense discussed in this paper, but rather «morally justified rights». When a utilitarian theory makes the assertion that A has a right to X, it means that A’s obtaining X is morally justified because it is conducive to the greatest possible happiness. Thus, utilitarianism does not attach a special importance to moral rights.}

Other moral concerns can be expressed in the language of social values and goals, but moral rights are the only available resource to reflect the personal separateness of persons. Both the Will Theory and the Interest Theory fail, though the latter to a greater extent than the former, to display the essential connection between moral rights and individual autonomy.\footnote{See footnote 5 above.}

One influential view in Anglo-American jurisprudence fits within the conception of rights as deontic constraints. Ronald Dworkin says that the point of moral rights is to block or «trump» welfare maximization.\footnote{Dworkin 1977.} This account is too narrow, because it implies that moral rights need be understood against a contrapuntal consequentialist theory. I contend that a fertile theory of moral rights must discuss the reflective function moral rights perform in moral systems that guarantee individual inviolability and independence. In section I, I show that rights as deontic constraints respond to personal separateness understood as a fundamental fact about personhood. In section II, I discuss the connections between various rights-related theories and two dimensions of personal separateness: agent-separateness and patient-separateness. In the final section I offer a reflective theory of moral rights that differentiates between a moral system positively permitting the violations of rights and a moral system letting such violations occur by not requiring their prevention. This theory is Kantian in that it provides an autonomy-based account of moral rights that also implies duties to oneself.
Robert Nozick has argued that rights must be understood as «side constraints» (i.e. deontic constraints) in order to capture the ideal of individual inviolability. On this view, rights are correlative to moral prohibitions of the form «Don’t violate constraints C». Thus rights forbid treating people in certain ways, and they must be respected no matter the overall benefits that could be obtained by alternative conducts. That is, in principle rights may not be infringed even when this can lead to greater utility overall, and, more strikingly, even when by infringing them we can minimize the overall violation of rights. The clause «in principle» is important, however. Even if we accept that rights are deontic constraints, the question remains open whether an agent could justifiably infringe a constraint under some conditions in order to produce a greater good or to prevent a greater number of transgressions of the same constraint (committed either by himself or by others). This question could be answered in the negative or in the affirmative. In the former case, we get absolute deontic constraints, which allow an agent to violate a right under no circumstances whatsoever. In the latter case, we obtain deontic constraints qualified by mere permissions (not obligations) to infringe those constraints when doing so is needed to produce greater utility. Following Thomson, I call such permissions «distributive exemptions».10 «Distributive exemptions» permit, under specified circumstances, infringing a constraint to produce a greater non-moral good (e.g., saving people) or a moral one (e.g., minimizing killings). The extent to which rights protect individual inviolability varies depending on whether they are qualified by distributive exemptions and, if so, according to the content and scope of those exemptions. By widening the exemptions, a moral theory progressively reduces individual inviolability (no matter what other values it could further) and, at the limit, it can slide into some form of utilitarianism. If the degree of inviolability falls below a certain critical threshold, the notion of moral rights gets blurred. (This is the case in proportionality or balancing constitutional accounts that accept the infringement of rights as a way of maximizing the weighted average of many potentially conflicting rights.)11

Nozick’s motivation to construe moral rights as deontic constraints can be best appraised by examining his rejection of «utilitarianism of rights». He writes:

For suppose some condition about minimizing the total (weighted) amount of violations of rights is built into the desirable end state to be achieved. We then would have something like a «utilitarianism of rights»; violations of rights (to be minimized) merely would replace the total happiness as the relevant end state in the utilitarian structure. […] This still would require us to violate someone’s right when doing so minimizes the total (weighted) amount of the violation of rights in the society.12

Utilitarianism of rights cannot count as a deontological position, because it renders the value of each moral right contingent on the requirement to produce the greatest possible fulfillment of rights. Thus «rights» as spelled out in utilitarianism of rights lacks the anti-consequentialist features of rights as deontic constraints. Nozick rejects

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10 Thomson 1976; Thomson 1986. For simplicity, I assume that «distributive exemptions» do not discriminate between killing to minimize one’s own killings or other people’s killings. In her later writings, Thomson gave up the term altogether, probably because it was associated with a solution to the trolley problem she had later dismissed; see Thomson 1990, 179 (footnote 2).


utilitarianism of rights by resorting to Rawls’s critique of utilitarianism. As is well known, Rawls says that the most natural way of arriving at utilitarianism is to adopt a holistic view of society. He says:

This view of social cooperation is the consequence of extending to society the principle of choice for one man, and then, to make this extension work, conflating all persons into one through the imaginative acts of the impartial sympathetic spectator. Utilitarianism does not take seriously the distinction between persons.

Inspired by Rawls, Nozick contends that, while it is reasonable for one individual to suffer a harm for the sake of a greater good, it is impermissible for a society to impose a loss on one member to produce a greater benefit for another or for the whole. According to Nozick, violating people’s rights in order to produce a moral or non-moral good is impermissible because «there is no social entity with a good that undergoes some sacrifice for its own good». And he goes on to say that using one person for the sake of others «does not sufficiently respect and take account of the fact that he is a separate person».

In fact, I believe that Nozick’s argument cannot justify deontic constraints. Let’s examine the argument in detail:

(1) It is permissible for one person to endure some sacrifice for a greater gain (or to avoid a greater loss). (2) If persons were integral parts of one social entity, it would be permissible for this entity to sacrifice one of its parts for the entity’s greater good. (3) But in fact there is no such entity (of which persons are integral parts). Therefore, it is impermissible to sacrifice one individual for the sake of others.

This is a non sequitur. Even assuming that all the premises are true (and they seem to be true), the conclusion does not follow, because the argument denies the antecedent. Indeed, (3) is the negation of the antecedent in (2). The permissibility of using people for the sake of others could be grounded on reasons other than the fact that there is a social entity, that is, on reasons that are congenial to the fact that each person has a separate and distinct point of view. For instance, one could claim that social welfare ought to be maximized because that is the proper social choice procedure to respect everyone’s right to equality. On this view, it is by no means the existence of a social entity that warrants the utilitarian calculus, but rather the fact that everyone’s interests should matter equally. The ideal of equality underlying this conception of utilitarianism does not undermine personal separateness.

Nozick really begins his treatment of deontic constraints by pointing to a different foundation. He claims that violating someone’s rights to prevent other people’s rights from being violated is morally on a par with using a person for the benefit of others. Thus, Nozick tries to provide a principled justification of deontic constraints that is independent from any view of society:

Side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent.

13It is natural to find Rawls and Nozick on the same boat at this point. Though Rawls’s (original) theory of justice is not formulated with the aid of moral rights, it might be suggested that moral rights constitute its main thrust. Thus, Ronald Dworkin suggests interpreting Rawls’s principles of justice as deriving from a fundamental moral right to equal consideration and respect: Taking Rights Seriously.

15Nozick 1974, 33.
16The fallacy of denying the antecedent has the following structure: If A, then B. But not A. Therefore, not B. The fallacy mistakes a sufficient condition for a necessary condition.
17Nagel 1979, ch. 8; Kymlicka 1989, ch. 3; Taylor 1989.
18Nozick 1974, 30-1.
As Nozick notes, Kant’s view of autonomy suggests a different account of deontic constraints. It is not that, by using persons as means, we would be misconceiving the nature of social choice, but rather that we would be disregarding a fundamental fact about personhood. Moral principles can be justified because of their ability to reflect fundamental moral values. Elsewhere I have suggested that moral rights provide a rational response to the fact of our individual separateness and independence, and in the following sections I will elaborate on the suggestion that moral rights have a reflective function.  

One well-known reflective view is Samuel Scheffler’s «agent-centered prerogative». Scheffler argues that morality must provide a rational response to the independence and distinctiveness of the personal point of view. This means that the distinctive way in which persons acquire concerns and commitments can come into conflict with the impersonal good. In the absence of such perspective – says Scheffler – people would simply cease to be the kind of beings they are. As he puts it, «to have an independent point of view is part of the nature of a person if anything is», Scheffler maintains that, in order to offer a rational response to the independence and distinctiveness of the personal point of view, morality should allow each agent to give a differentially greater weight to his own goals and projects. He calls this permission the «agent-centered prerogative». By granting this permission morality would follow a «liberation strategy», that is, it would reflect the personal point of view by freeing agents from the requirement to produce the optimal state of affairs in all circumstances. The liberation strategy is coupled with the «independence thesis»: we need the agent-centered prerogative as a rational strategy for taking account of the personal point of view, but this motivation does not extend to «agent-centered restrictions», that is, deontic constrains. If Scheffler is right, Nozick has identified a fundamental source of moral motivation in grounding deontic constraints on the separateness of persons, but erred in focusing on constraints (i.e., restrictions), because it is really a mere general permission what morality needs in order to reflect the personal point of view. In effect, Nozick tries to explain deontic constraints in terms of an objective aspect of violations of those constraints – i.e., using a person as a means to someone else. But Scheffler maintains that deontic constraints are surrounded by an aura of irrationality. Whatever the disvalue attached to the violation of a constraint, we will be unable to explain why we may not engage in the violation as a way of preventing more extensive violations.

Let us frame Scheffler’s problem in terms of rights. Suppose that violations of rights are disvaluable because they disregard the separateness of persons. Violating a person’s right to prevent a greater number of violations might not be disrespectful to the separateness of persons, for, ex hypothesi, the separateness of persons would nonetheless be disregarded – and to a greater extent – if one let the more numerous violations occur. If respecting moral rights is of such paramount moral importance, how could it be impermissible to violate a person’s right if that were necessary for avoiding the transgression of a greater number of equally important rights? If Scheffler

\[ 19 \text{Spector 1992.}\]
\[ 20 \text{Scheffler 1994, 82.}\]
\[ 21 \text{Scheffler 1994, 58.}\]
\[ 22 \text{Scheffler 1994, 62, 81-2.}\]
\[ 23 \text{Scheffler 1994, 87.}\]
is right, personal separateness cannot ground rights as deontic constraints. But is he right?

Larry Alexander has argued that Scheffler’s position is implausible because it establishes an agent-centered prerogative that is not protected by agent-centered restrictions. Therefore, while an agent A is not required to sacrifice his personal projects to produce an impersonally optimal state of affairs S, other parties and, in particular, the government would have the liberty and, in principle, the duty as well to coerce A or take other actions that will result in an identical sacrifice of A’s personal projects if that is needed to bring about S.24 Alexander’s point is compelling in that an unprotected agent-centered prerogative has little practical value to the agent. The point shows that an agent-centered prerogative must be protected by some restrictions to allow individuals to effectively carry out their personal projects. It does not show that those restrictions must be agent-centered ones. For instance, utilitarianism of rights provides agent-neutral restrictions that can block various impersonally maximizing actions. Agent-centered restrictions become relevant when the personal viewpoints of various individuals cannot be jointly satisfied or, in other words, cases in which various individuals are allowed by the agent-centered prerogative to take conflicting decisions. In such cases it might be thought that the agent’s personal perspective is not the deal breaker.

Scheffler’s argument is a reflective one. He is concerned with the impact of fundamental facts on the structure of moral reasoning, rather than with the external practical outcomes of various moral theories. The question I would like to discuss now is whether deontic constraints (i.e., agent-centered restrictions) are not necessary as well in order to reflect the fact of personal separateness in moral reasoning. In order to specify the question, I have proposed elsewhere to distinguish between two kinds of personal separateness. We can regard persons either as agents or as patients (victims or beneficiaries) of other people’s actions. So personal separateness allows two different kinds: patient-separateness and agent-separateness.25 Patient-separateness requires us to treat individuals (potentially) affected by our actions as separate individuals, in principle avoiding trade-offs among them. Rights express patient-separateness, because they generally forbid maximizing welfare. This is the sort of personal separateness that Nozick has in mind. According to agent-separateness, my responsibility as a moral agent is limited to my own actions. If someone else violates a right, it is she who commits the transgression and who, therefore, will have to answer for it. Thus understood, agent-separateness is a form of agent-relativity, because each agent has a different moral aim. When moral aims are held in common, we have agent-neutrality.26

It might be thought that, assuming patient-separateness, agent-relativity in the pursuance of the aims of morality is a necessary and sufficient condition of deontic constraints. The argument would run in this way. When we endorse agent-neutrality (i.e., we reject agent-relativity), we are led to some form of «negative responsibility».27 According to the doctrine of negative responsibility, an agent must treat all states of affairs resulting from his actions on a par, regardless of whether some of these states of affairs are directly produced by someone else. Assuming we have adopted patient-separateness, this doctrine lays down a duty to minimize rights violations whoever

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25Spector 1992, 177-8; Shelly Kagan makes a similar distinction: «... the existence of the personal point of view has implications for the individual not only qua agent but also qua patient»; Kagan 1989, 338.
26The distinction between agent-relativity and agent-neutrality was introduced in Parfit 1984, 104.
27Bernard Williams introduced this term of art: Williams 1973, 94.
commits them (i.e., «utilitarianism of rights»). Because a duty entails permission, utilitarianism of rights establishes a permission to violate a right in order to prevent a greater number of violations. On this view agent-relativity would be a necessary condition of deontic constraints because, as we have already seen, «utilitarianism of rights» is incompatible with such constraints. The argument would conclude that, conversely, so long as we assume patient-separateness, the rejection of agent-neutrality (i.e., the endorsement of agent-relativity) is a sufficient condition of deontic constraints. This argument is wrong, because agent relativity is neither a sufficient nor a necessary condition of deontic constraints. It will be instructive to see why the argument fails.

In fact, agent-relativity is not a sufficient condition of deontic constraints (even assuming patient-separateness). This is so because there are two different views of moral agency, which I will call the record view and the present-action view. On the latter, the moral agent adopts a step-by-step decision procedure. He morally evaluates each of his choices potentially transgressing other people’s rights on its own terms, irrespective of its relation to other choices or actions he made or will prospectively make. On the record view, in contrast, the agent visualizes each of his actions as an entry into his moral record, so to speak. Moral responsibility is understood as liability to charges and credits to one’s record as an agent. Thus all wrong actions (irrespective of the time of performance) are entered into the agent’s moral record. This conception of moral agency lays the basis for a moral system requiring each agent to minimize the wrong he does over his lifetime. «Moral record utilitarianism of rights» – as I propose to call it –, as much as Nozickian «utilitarianism of rights», is incompatible with rights as deontic constraints.

In cases where an agent’s only way to prevent himself from killing five people is by killing one bystander, the two views of moral agency yield different results. Whereas the record view says it is morally obligatory for the agent to kill the bystander as a way of minimizing his (the agent’s) wrongs, the present-action view does not allow the prevention. It is the present-action view that avoids all forms of utilitarianism. In contrast, the record view leads to forms of utilitarianism that are incompatible with deontic constraints. Therefore, accepting agent-relativity does not necessarily lead to deontic constraints (even assuming patient-separateness). All depends on the view of moral agency adopted.

Nor is agent-relativity a necessary condition of deontic constraints. Even if we reject agent-relativity and accept some kind of agent-neutrality, so that we are negatively responsible for other people’s actions as much as we are for ours, there is one way of retaining deontic constraints that block a large number of otherwise obligatory (and hence permissible) maximizing violations. The trick appeals, again, to the distinction between the record view and the present-action view. Agent-neutrality, just as agent-relativity, can be associated with both views on moral agency. Of course, when agent-neutrality is blended with the record view, we obtain Nozick’s «utilitarianism of rights», which requires all agents to maximize the fulfillment of rights, whoever might transgress them. By contrast, when agent-neutrality is joined to the present-action view, the resulting moral theory establishes time-relative deontic constraints. In fact, that theory would lay down a moral duty on every agent to minimize rights violations

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28 The concept of «moral record» was introduced, within a different context, in Feinberg 1970, 30, 124.
29 I borrow the description from Kamm 1996, 249.
30 In Kamm 1996 Kamm discusses two such cases: Guilty Agent Case and Future Case. In the former, «an agent has set a bomb that will kill five people unless he himself now shoots one other person and places that person’s body over the bomb» (Kamm 1996, 242). In the latter, an agent considers killing one person now to prevent his more numerous killings in the future (Kamm 1996, 244).
at every time \( t \), whoever might commit them, subject to deontic constraints that
prohibit minimizing violations committed by any agent either at any time \( t-n \) or \( t+n \)
by violating rights at \( t \). Just as the present-action view and agent-relativity give rise to
deontic constraints on optional interventions and on interventions required by moral
duties of aid, the present-action view and agent-neutrality generate time-relative
deontic constraints on minimizing interventions that would otherwise be obligatory
because of agent-neutrality. Though there is a good deal of overlap between the two
combinations, it is the former (agent-relativity plus the present-action view) that best
explains the standard scope of moral rights in non-consequentialist, deontic theories.

<table>
<thead>
<tr>
<th>Agent-relativity</th>
<th>Record View</th>
<th>Moral record utilitarianism of rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent-neutrality</td>
<td>Present-Action View</td>
<td>Rights as deontic constraints</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Time-relative deontic constraints</td>
</tr>
</tbody>
</table>

Table 1: Rights-Related Moral Theories

As Table 1 shows, agent-relativity and agent-neutrality are orthogonal to deontic
constraints. Agent-relativity \textit{per se} is concerned with Scheffler’s agent-centered
prerogative, not with deontic constraints. In effect, agent-relativity reflects the
personal point of view by liberating agents from the demands of a maximizing type
of consequentialism. Agent-relativity alone justifies the absence of an obligation to
maximize rights fulfillment as a way of paying attention to the fact that people have
an independent personal point of view. In order to spell out the rationale of moral
rights as deontic constraints we need to appeal to a trio of ideas: patient-separateness
coupled with agent-relativity and the present-action view of moral agency.

The complexity of the rationale of moral rights as side constraints has been probably
obscured by the fact that people are often committed to moral causes that define
their moral integrity. Such agents will typically refuse to yield to the demands of
maximization when they are committed to deontic constraints (e.g., not killing human
beings).\(^{31}\) In such cases the agent-centered prerogative coincides in content with
deontic constraints. Let me explain. Deontic constraints are moral duties. Since any
duty entails a permission to act in accordance with it, deontic constraints entail a
permission not to commit minimizing violations of rights. For agents with the relevant
commitments, the entailed permission overlaps with the agent-centered permission to
refrain from minimizing violations. That is, the intersection of agent-separateness and
patient-separateness can represent moral integrity when moral agents are committed
to deontic constraints.

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Let us recall that Scheffler criticizes deontic constraints as irrational because there
seems to be no reason why, if rights disregard the separateness and distinctness
of persons, we should not be allowed to minimize the violation of rights. Kamm
claims that Scheffler’s problem does not arise because constraints are grounded on
the status of persons as established in a moral system.\(^{32}\) She says that a person is
inviolable if, and only if, it is impermissible to harm her, even though by doing so

\(^{31}\text{WILLIAMS 1973, 108-18.}\)
\(^{32}\text{KAMM 1996, 262-4.}\)
it is possible to minimize violations of the restriction against harming. This means that the fewer circumstances in which agents can permissibly harm people, the more inviolable persons are. Kamm contends that deontic constraints forbid minimizing violations because the best moral system is one that guarantees the status of persons as ends-in-themselves by minimizing the situations in which agents can permissibly harm them.

Scheffler’s and Kamm’s views are types of reflection theories. On both views a certain deontic rule is explained as a reflection of some fundamental moral concern relative to personhood. On Scheffler’s theory, the agent-centered prerogative is the way in which morality reflects the independence of the personal point of view. On Kamm’s theory, deontic constraints are the way in which morality reflects the status of persons as ends-in-themselves. Thus reflection is a triadic relation between morality, a fundamental moral concern, and a deontic rule. When morality does not contain the relevant deontic rule, it distorts the relevant moral concern. Accordingly, Scheffler contends that pure consequentialism distorts the personal point of view because it does not contain an agent-centered permission to attach more weight to personal projects and goals. And Kamm says that, if morality dispensed with deontic constraints, it would distort the status of persons as ends-in-themselves, because it would treat persons as if they were at the service of other people’s goals.

Generalizing Kamm’s account, Lippert-Rasmussen has argued that deontic constraints can be explained on the basis of a certain conception of independence. A person is independent in this sense if, and only if, it is impermissible to harm them in all circumstances, even though others fail to comply fully with the moral requirements. On this view, our status as persons is respected when it does not depend on others complying with the demands of morality. Thus morality reflects the status of persons as ends-in-themselves by laying down deontic constraints, because such constraints entail that people cannot be permissibly subordinated to the ends of others, even when that is necessary to ameliorate the effects of imperfect moral compliance. The account treats in a different way cases where an agent is confronted with violating an obligation to aid when that is needed to avoid other people’s more extensive violations of that obligation. The independence-based account implies that the agent cannot permissibly proceed. However, Lippert-Rasmussen is wrong in holding that this conclusion necessarily follows from Kamm’s view. In effect, duties to aid could be construed, not as a reflection of the status of persons as ends-in-themselves, but rather as arising out of the consequentialist area of morality (i.e., the demand to maximize the good overall), qualified by the agent-centered prerogative. If we understood duties to aid in this way, we would not regard them as deontic constraints and, therefore, we would say that an agent could permissibly fulfill his duty to aid by maximizing the aid that results from his active or passive intervention (provided that doing so does not compromise his moral integrity).

Lippert-Rasmussen in the end discards the independence-based explication of deontic constraints. He contends that when a moral system guarantees inviolability and independence, it attacks the status of persons in a different form, that is, by allowing agents to let people be harmed when others do not comply with moral requirements.

I believe that Lippert-Rasmussen misconceives the idea of a moral system guaranteeing the inviolability and independence of individuals. The reflection value of moral principles probably requires perfect compliance. Moral rules designed to work within

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33Kagan uses the expression «reflection theories» with the same meaning: See Kagan 1998, 281.
34Lippert-Rasmussen 1996.

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a second-best morality are expected to reflect, at least in part, the moral imperfection of moral agents. One way of making this point is by imagining that the moral system is a sort of third party whose universe of actions is confined to requiring, forbidding and permitting in the normative sense (e.g., a kind of «impartial spectator»). Essential to reflection theories is an asymmetry between a moral system permitting the violation of a duty in the sense of justifying it, and allowing such violation in the negative sense of letting it occur by not requiring its prevention when this action is prohibited by other moral constraints. When others do not comply with the demands of morality, their conduct is simply wrong. However, when a moral system justifies the violation of the relevant constraints, it denies people’s inviolability and independence. Instead of the asymmetry «harming/letting harm occur», which is typical of «first-order» deontic morality, reflection theories are based on a parallel «second-order» asymmetry, namely, that between a moral system attacking a value and letting an attack on that value occur.

By relying on the second-order asymmetry I have suggested, Kamm might reply to Lippert-Rasmussen by saying that morality distorts the status of persons as ends-in-themselves when it permits or requires sacrificing other people, regardless of whether the sacrifice is needed to prevent more extensive sacrifices. Thus morality fails to reflect the status of persons as ends-in-themselves if it legitimates an agent’s decision to sacrifice someone else. Yet morality does not distort that status, but rather reflects it, if it prohibits all sacrifices (distributive exemptions aside). This is compatible with conceding that morality also fails to reflect that status if it just ignores those sacrifices by failing to require their prevention when the prevention could be achieved without sacrificing other people and without compromising the agent’s personal point of view.

Scheffler’s personal point of view and Kamm’s status of persons as ends-in-themselves (just as Rawls’s separateness of persons) can be regarded as variations on Kant’s ideal of autonomy and independence. All these concepts allude to the condition of persons as autonomous sources of decisions, plans, and actions. More specifically, the personal point of view corresponds to autonomy when it is seen from the agent’s perspective (i.e., agent-separateness) and the status of persons as ends-in-themselves corresponds to autonomy when it is visualized from the viewpoint of patients (patient-separateness). One pressing question at this juncture is why morality reflects agent-separateness and patient-separateness through different normative modalities. In fact, putting Scheffler’s and Kamm’s accounts together, we get that agent-separateness is reflected through a permission (prerogative) while patient-separateness is reflected through a prohibition, that is, a constraint. Scheffler says that, while we need the permission in order to reflect the personal point of view, deontic constraints distort the personal point of view because they oblige agents to abstain from certain behaviors. Against the background of consequentialism, it seems – as Scheffler says – that all we need is a permission to correct the distortion of the personal point of view produced by the unqualified requirement to attain the best overall state of affairs. However, I have suggested that deontic constraints are called for in order to reflect the personal point of view when appraised from the perspective of patients. If so, the paradox to be explained is why a permission suffices in order to explain agent-separateness whereas a restriction is needed to reflect patient-separateness.

The paradox can be easily dissolved by considering what it means for morality to reflect a certain fundamental value. Reflection is quite different from causal maximization. Morality typically reflects a value not by maximizing it, but by laying down a duty to respect it. Deontic constraints are in keeping with this general idea, because they consist in duties (i.e., restrictions). That is, we hardly need to explain
why morality establishes duties or restrictions in order to reflect personal autonomy. Turning Scheffler’s argument upside-down, it is not deontic constraints, but rather the agent-centered prerogative that requires explanation. If the personal point of view is so fundamentally important, how come that morality merely establishes a permission in order to reflect it? Scheffler’s prerogative is a bilateral liberty, because it allows agents both to attach and not to attach, at their discretion, greater weight to their personal projects and concerns. Given that the prerogative is neutral with respect to an agent’s attitude to his own personal point of view, how can it reflect anything?

One possible answer would be that, though we generally need duties to reflect a value, it would be superfluous to oblige agents to weigh their own projects and goals over others’, because the personal point view is such a basic fact about personhood that agents naturally have more concern for their own projects and goals. When we encounter an agent who seems to be guided only by impersonal concerns (e.g., alleviating mankind’s poverty) regardless of his personal projects and goals, one might claim that this is a mere delusion. That is, one might argue that this agent is committed to an altruistic or humanitarian project that might only seem detrimental to his personal point of view when seen from the perspective of other people’s viewpoints. Yet this argument relies on a vacuous empirical claim, or a dubious metaphysical proposition. If it is logically impossible for an agent to be guided by genuinely impersonal considerations that are effectively detrimental to his own goals and projects, then a prerogative is all we need. But the logical impossibility cannot be tested empirically, and is hardly sustainable as a metaphysical claim.

If an agent can, as a matter of fact, act against his goals and projects (however unreasonable this might be), the superfluity argument cannot explain the rationale of the agent-centered prerogative. In that case, as Kant claimed, morality must resort to duties to express the value of agent-separateness (and patient-separateness). Duties to oneself as an autonomous being reflect one’s personal point of view better than a mere permission to treat oneself as an autonomous being. This latter permission would allow destroying one’s own autonomy by brain washing, for instance. Of course, duties to oneself entail the agent-centered prerogative, because a duty to treat oneself as an autonomous being entails a permission to attach more weight to one’s personal projects and concerns. However, such permission is insufficient to properly reflect the value of the personal point of view. Kantian duties to oneself reflect that value more fully because they forbid denigrating one’s own personal autonomy.

It is important to emphasize that duties to oneself do not entail a duty to attach greater weight to one’s own preferences. This latter duty would attack individual autonomy, precisely the value that duties to oneself mean to reflect. Perhaps Scheffler was led to endorsing an option, instead of a duty, to avoid this apparent implication. The truth is, however, that a duty to treat oneself as an autonomous being does not necessarily mean refraining from taking care of one’s own or general happiness. On the contrary, duties to oneself comprehend a permission to choose among widely divergent life plans, as well as a requirement to cultivate and preserve the basic conditions of one’s autonomy. When Kantian duties to oneself are used to express the personal point of view, reflection moral theorizing acquires greater consilience, as Table 2 illustrates. Duties to oneself serve to reflect Scheffler’s personal point of view, just as duties to others reflect Kamm’s status of persons as ends-in-themselves. Autonomy is reflected through duties both from the agent’s and the patient’s perspective.

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35Shelly Kagan insinuates this theoretical possibility: «...we could certainly imagine a moral theory that would, in fact, require an agent to promote her interests [...] this might better reflect the nature of the personal point of view than would a system with options.» See KAGAN 1998, 285-6.
main difference lies in the direction of those duties: self-regarding in the case of duties to oneself, other-regarding in the case of duties to others. The second formula of the Categorical Imperative clearly conveys this idea: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means."

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<thead>
<tr>
<th>Scheffler</th>
<th>Value reflected</th>
<th>Normative modality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kamm</td>
<td>Status of persons as ends-in-themselves</td>
<td>Duties to others (Moral rights)</td>
</tr>
<tr>
<td>Kant</td>
<td>Autonomy (Agent- and patient- separateness)</td>
<td>Duties to oneself</td>
</tr>
</tbody>
</table>

Table 2: Deontic Reflection Theories

Moral rights and duties to oneself are resources to express the separateness of persons in its two dimensions: agent-separateness and patient-separateness. In turn, agent-separateness must be understood according to the present-action view. This conception of agency does not express the separateness of persons. It might be thought to rather express the rejection of personal inter-temporal identity, in Parfit’s vein. However, I do not believe that inter-temporal separateness really lies behind the notion of moral rights on a par with inter-personal separateness. I am inclined to regard the present-action view as a way of releasing moral agents’ choices from the burden of their past choices and actions, giving them the chance to rectify their past mistaken practical reasonings, and, eventually, affording them the opportunity of moral redemption.

References


36Parfit 1984, Part Three.