

The Challenge that Deontic Restrictions Pose

Both opponents and, at least some, advocates of deontic restrictions agree that, at least initially, there is something problematic about deontic restrictions.³⁸ It is often suggested that there is something irrational or even paradoxical about an agent not being allowed to act in a morally problematic way even if, by acting in that way, »she could achieve a better outcome in terms of the very restriction that she is required to heed« (Heuer 2011, 237). Despite such suggestive remarks, it is not clear what exactly is meant to be problematic about deontic restrictions. Consider the following cascade of questions by Nozick:

Isn't it *irrational* to accept a side constraint *C*, rather than a view that directs minimizing the violations of [a deontic constraint] *C*? [...] If non-violation of *C* is so important, shouldn't that be the goal? How can a concern for the nonviolation of *C* lead to a refusal to violate *C* even when this would prevent other more extensive violations of *C*? What is the rationale for placing the nonviolation of rights as a side constraint upon action instead of including it solely as a goal of one's actions? (Nozick 1974, 30; emphasis in the original.)

As Lippert-Rasmussen (1999) points out, none of these questions make clear what exactly is so puzzling about deontic restrictions: in virtue of which property of theirs do they appear irrational and/or hard to justify? To illustrate, the first and the fourth sentence simply raise the question: must deontic restrictions not appear irrational? What could be a plausible rationale for them? The second sentence might be taken to suggest that if it were morally not so important that one not φ , then a deontic restriction against φ -ing would be less mysterious. But this is clearly not the case. For instance, one might imagine a deontic restriction against trespassing another person's property.³⁹ I suppose that the non-violation of the corresponding deontic constraint against trespassing another person's property is not as important as the non-violation of other deontic constraints. And yet, it appears to me, a deontic restriction against trespassing another person's property can still appear puzzling. Consequently, the importance of our not performing the types of actions for

38 Authors who ultimately defend restrictions but nevertheless concede that there is, at least initially, something puzzling about restrictions include Darwall (1986), Foot (1985), Heuer (2011), Nagel (1986), and Nozick (1974). Restriction sceptics, of course, are unanimous in their support of the thesis that restrictions are problematic.

39 The example is Lippert-Rasmussen's. Compare Lippert-Rasmussen (1999, 51).

which there are deontic restrictions cannot be the feature that makes deontic restrictions puzzling. Nozick's third sentence, finally, singles out a »concern for the non-violation of C« as the potentially problematic feature of deontic restrictions. If one understands a concern for the non-violation of C as a concern that, overall, there are as few violations of C as possible, then, of course, a deontic restriction that forbids an agent to violate C even in a situation in which her violating C would reduce the overall number of violations of C must appear puzzling. However, to assume that a concern for the non-violation must be understood in that way seems to be question-begging in favour of a minimising-violation approach.

So, the question remains: what precisely is meant to be peculiarly problematic about deontic restrictions? In what follows, I will reconstruct, provide a rough taxonomy of, and discuss some – implicit and explicit – answers to that question, suggested by writers who are concerned directly with a potential »puzzle« or »paradox« of deontic restrictions.

There will be five approaches to be discussed. Four of these approaches have been distilled from the existing literature. The fifth and final approach is my own. According to a first approach, deontic restrictions are problematic simply in virtue of there being no plausible rationale for them. The second analysis says that deontic restrictions are puzzling because they conflict with the supposedly highly plausible idea that it can never be wrong to do what is best. A third idea is that deontic restrictions have an air of paradox around them given that they conflict with what has been called »maximising rationality«. Fourth, one might think that deontic restrictions are puzzling because many – if not all – of the considerations that have been mustered in their support seem to simultaneously cast doubt on their validity. According to the fifth analysis, deontic restrictions are puzzling because their implied time- and agent-relativity is in tension with the victim-focused account of wrongness that appears to be most adequate for many types of actions for which there are deontic restrictions. While none of the above analyses turns out to be entirely convincing, my conclusion will be that it is the fifth approach that holds most promise in providing an adequate description of the problem of deontic restrictions.

3.1 No (Straightforward) Rationale

According to a first approach, deontic restrictions are problematic because there is no (straightforward) rationale for them. This vague formulation leaves room for a number of different interpretations. Accordingly, there are different versions of the »No (Straightforward) Rationale«-approach.