

The Value of Inviolability

Nagel (1995, 2007) proposes to account for deontic restrictions in terms of the value of inviolability. Call this the Inviolability Account or, in short, IA.⁹⁹ At the heart of the IA lies the following thought:

What actually happens to us is not the only thing we care about. What *may* be done to us is also important, quite apart from whether or not it *is* done to us – and the same is true of what we *may do* as opposed to what we actually do. (Nagel 1995, 91; emphases in the original.)

To illustrate, according to Nagel, we do not only care about whether we are tortured or not, but also about whether it is *permissible* to torture us. Similarly, we do not only care about whether or not we are killed or seriously harmed, but also about whether or not it is permissible to kill or seriously harm us. To be more precisely, we care about these things *not* being permissible to be done to us.

If this is on the right track, then it will not only be valuable that certain things are done or not done to us, but also that we have a certain *status*. Being inviolable is one such status. As a first approximation, we might say that a person is inviolable if, and only if, there are circumstances in which it is not permissible to harm her (compare Lippert-Rasmussen 1996, 335). Given that inviolability is more often than not taken to be a gradable concept we might also say: an individual is inviolable *to the extent that* there are circumstances in which it is impermissible to harm it.

99 Kamm (1989, 1991, 1992, 1996, 2007) and Quinn (1989) offer very similar accounts. Quinn – to whom both Kamm and Nagel refer and who might thus be considered to be the founding father of the relevant strand of argument – refers to what he calls »independence«, instead of »inviolability«. While the labels differ, the underlying concepts bear more than a passing resemblance. For critical discussion of one version of IA or another, compare Kagan (1991), Lippert-Rasmussen (1996, 1999, 2009), Otsuka (1997), and Rakowski (1998).

One major difference between the accounts of Kamm and Quinn, on the one hand, and of Nagel, on the other hand, concerns the ground of our being inviolable. According to Nagel, we are inviolable because it is good (for us) that we are inviolable (value-version of IA). According to Kamm and Quinn, we are inviolable because it is fitting that we are inviolable (fittingness-version of IA). In what follows I will focus on Nagel's version. While the fittingness-version can avoid some of the challenges of the value-version, most problems (modulo a flourish or two) apply to both of them.

Since being inviolable is a normative status, one will not lose one's inviolability in case one is violated. This is parallel to, say, the status of having property rights. Just because someone steals my bicycle, this does not mean that I lose my property rights concerning my bicycle. (Compare Lippert-Rasmussen 1999, 57.)

Since the value of inviolability attaches to a normative status, it is different from the value that attaches to actions or (non-normative) states of affairs. If well-being is good, then I can make the world a better place by promoting well-being. However, there is no way I could promote the value of inviolability, at least not against the backdrop of a realist metaethical framework. For there is no way by which I could change whether or not it is permissible to harm somebody in some further to be specified circumstances. Accordingly, my appropriate reaction to the value of inviolability *cannot* be promoting it. Rather, according to Nagel, I react appropriately to the value of inviolability in case I respect other persons' status as being inviolable (compare Nagel 1995, 85).

How does the status of being inviolable and its being valuable to have that status bear on the problem of deontic restrictions? Consider the standard example. I have two options. Either killing one innocent person against her will myself and thereby saving five other innocent persons from being killed against their will. Or not killing one innocent person against her will and letting it happen that five other innocent persons are killed against their will. Suppose it were permissible in these circumstances to perform a minimising-violation, that is, to choose the first option. Presumably, if minimising-violations were permissible (in these circumstances), that would lead to fewer killings overall, such that my chances of being killed myself would be lower than if minimising-violations were not permitted. On the assumption that killings are bad and that having lower chances of being killed is good, there is a sense in which it would be good if minimising-violations were permissible.

However, there is also a sense in which it would be bad if minimising-violations were permissible. If minimising-violations were permissible, then we would be less inviolable (that is, more violable) than we would be if minimising-violations were not permissible. For there would be more circumstances in which it is permissible to harm us. Plausibly, if being violable is bad, being more violable will be worse. Therefore, if minimising-violations were permissible, it would be worse *in that sense* than if they were impermissible.

On the assumption that what we gain in terms of status is more than what we lose in terms of our chances of being killed if minimising-violations are *not* permissible, it follows from IA that it is better if minimising-violations are not permissible. Therefore, we have reason to believe that we are inviolable