

## Questioning the Question: Is There a Genuine and Idiosyncratic Problem of Deontic Restrictions?

In part III of this thesis, I have argued that the most promising approaches to the justification of a deontic restriction against killing the innocent fail. As a result, the challenge that such a deontic restriction poses has still not been met: it is not clear how to reconcile the agent- and time-relativity implied by a deontic restriction against killing the innocent with the victim-focused account of wrongness that appears most adequate with respect to the type of action »killing the innocent«. One possible reaction to that result is to question the intelligibility of the whole project. There are a number of questions that might be asked in this regard: Are there meaningful cases where deontic restrictions apply? Does the idea make sense that one perform an action in order to *thereby* prevent other actions? Is the problem of deontic restriction not just the problem of whether negative rights take precedence over positive ones? Finally, if there is a genuine problem of deontic restrictions, does it generalise and become a problem for all moral theories? In the following sections, I will take up each of these questions in turn.

### 9.1 Are There Meaningful Cases in Which Deontic Restrictions Apply?

One of the most common reactions to the supposed problem of deontic restrictions is that it is an illusory problem. The underlying idea is the following. The problem of deontic restrictions is illusory since there are no realistic scenarios in which a deontic restriction would apply. In particular, we realise that there are no realistic examples once we realise that an agent's intention is a significant factor for the evaluation of her actions. Take the alleged deontic restriction against killing the innocent. If there ever were a situation – unrealistically enough – where I could know for sure that by myself killing one innocent person I could save numerous other innocent persons from being killed, then what I would do when I decided to kill one innocent person would be to kill her *in order to* save other innocent persons. Thus, even if my action were bad, it would still hold that I would do something bad out of a laudable motive. The potential killers, however, who stop from killing because I kill, would probably kill for less laudable motives. Maybe they would kill for some material

advantage, in order to consolidate their positions of power, in order to take revenge, or even for the mere fun of it. Thus, their potential actions – killing for repellent, base motives – and my potential action – killing in order to prevent something even worse – cannot possibly be on a par. As a consequence, it does not hold good that I would perform a *pro tanto* morally objectionable action of one type in order to minimise the overall number of actions of the very same type. Once we allow for intentions to go into the descriptions of types of actions, we realise that the idea of a scenario in which a deontic restriction against killing the innocent is a mere philosopher's fantasy.

There are several things one might want to say in reply to this objection as regards the intelligibility of (the problem) of deontic restrictions. First, one might try to shift the burden of proof. The problem of the relevant act description is a general one. Whether or not intentions are to be included is a matter of dispute. What is more, even deontologists – and thus potential or *de facto* defenders of deontic restrictions – are wary of the idea that intentions are intrinsically normatively significant (cp. Scanlon 2008; and Kamm 2007, respectively). Thus, if it turned out that intentions are part of the relevant act description, this might be a solution to the problem of deontic restrictions. However, the idea that intentions *might* go into the relevant act description does not *dissolve* the problem right from the beginning. Further, even if it turned out that the intentions of the agent are relevant for the normative evaluation of the agent's doings, this might still be so only for some, but not for all cases. The assumption that, if true, would allegedly solve the problem of deontic restrictions, however, would be the far stronger claim that intentions are always relevant.

Second, there is at least one popular moral theory according to which the agent's intentions are vital for the evaluation of her actions and that yet seems to license deontic restrictions. The theory I have in mind is Kant's moral theory. The notion of a maxim is crucial for Kant's theoretical structure. A maxim specifies a type of action, the end of the action, and the motivation for the action. Both end and motivation might be understood as specifying the agent's intention. Thus, it does not seem too far-fetched to claim that the notion of an agent's intention is central to Kant's moral theory. And yet Kant seems to embrace deontic restriction. The point of his notorious liar's example seems to be that we are not allowed to lie, no matter what the circumstances. *Ipsa facto*, we are not allowed to lie in circumstances where our lying would reduce the total number of instances of lying overall. Again, the point is, of course, not that Kant's theory is correct. Nor that Kant himself understood the implications of his theory correctly. The point, again, is merely to highlight that considering