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DISCUSSION

INTRICATE ETHICS AND INVIOABILITY: FRANCES KAMM'S NONCONSEQUENTIALISM

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Frances Kamm's *Intricate Ethics*¹ lives up to its title. It presents the methods and contents of Kamm's nonconsequentialist ethical theory with discussion of some alternatives, both substantive and methodological. The main focus is on the distinctions that non-consequentialist ethical theory draws between different ways of bringing about states of affairs. This is presented in Kamm's characteristic style. Readers should expect highly complex, subtle arguments as Kamm draws out fine-grained distinctions from intuitive responses to cases. Those who find their intuitions less than firm at such a level of detail may find *Intricate Ethics* frustrating at times. Nonetheless, it is a highly significant work. It discusses issues at the heart of nonconsequentialist ethical theory with prodigious insight and clarity of thought. Even those whose intuitions prevent them from following Kamm to her conclusions will find the discussion along the way richly rewarding.

The book is divided into four sections. Section I, by far the longest section, focuses on questions about harming and aiding. Its main aim is to provide a Principle of Permissible Harm, giving the essence of nonconsequentialist constraints on harming innocent bystanders. Kamm sees this as a replacement for both the simple harming/not aiding distinction and the intended/foreseen distinction.

Kamm's principle is a variation on a downstream theory – a theory claiming that lesser evil* (evil or the involvement of a person in a way that leads to evil for them) must come downstream causally from the greater good. It is, however, merely 'downstreamish', for Kamm introduces several complications.

Under Kamm's theory, it need not be the justifying greater good itself that causes evil*. It is enough for permissibility if the

¹ Frances Kamm, *Intricate Ethics* (New York: Oxford University Press, 2007), 520 pp., £26.99.

evil* is caused by the greater good 'working itself out' (p. 162). Some means have a connection to the greater good that is 'tighter' than an ordinary causal connection. A means is the non-causal flipside of the greater good if, in that context, the obtaining of the greater good is nothing more than the obtaining of the means. For example, if a runaway trolley is headed towards five people, but we divert it onto an alternative route towards a single person, our means (switching the trolley) is the noncausal flipside of the greater good (the five being safe), given that there are no other threats present. Such noncausal flipside of the greater good can permissibly cause evil* (p. 141). Additionally, a structural equivalent of the greater good (a state that would be the greater good if not for certain bad consequences of its production) or a component of the greater good may permissibly produce evil*. However, these permissions only hold if the greater good will be sustained. Obviously, there is no justification unless the greater good is eventually manifested. Kamm also claims that justification is void if evil* is required to produce, rather than simply sustain, the greater good.

Kamm also argues that evil* may sometimes be caused by means that are causally related to the greater good. However, this can only occur if the means cause evil* indirectly, and do not overlap either evil* or a direct means to evil*.

Kamm's principle modifies the simple downstream principle by (1) allowing that the noncausal flipside, an aspect or a component of the greater good or its structural equivalent may permissibly cause evil*; (2) allowing that it is permissible for means that are causally related to the greater good to cause evil* if they do so indirectly and without overlapping with evil* or its direct cause.

To develop the second part of this principle, Kamm appeals to some very fine-grained intuitions. She claims that it is intuitively permissible to drive on a road to transport five to hospital, foreseeably causing vibrations that cause roadside rocks to tumble and kill one. However, she claims, it is impermissible to drive on another road, made of loosely packed rocks, which are thereby dislodged and tumble, killing one (p. 149). I suspect that many readers will find that their supply of strong intuitions cannot live up to the demands of Kamm's argument.

Kamm claims that her principle of permissible harm is justified by the distinction between *substitution* and *subordination* of persons: substitution of one person for another, but not subordination of one person to another, is compatible with appropriate

respect for each. In cases of permissible harm, where the evil* to one is a result of the greater good, its noncausal flipside, aspect, component or structural equivalent, the sacrificed person is only substituted for by, not subordinated to, the others (p. 165). In contrast, Kamm claims, in the impermissible cases, the position of the sacrificed person involves subordination to the others. If the one is harmed as means to the greater good, his position involves essential reference to his usefulness in achieving a good for the others. When he is harmed as a direct side effect of causal means to the greater good, then the importance of his good is trumped by the importance of the preservation of the means to the others' good. Both types of case involve subordination (p. 166). However, as Kamm herself notes, it is not clear that the substitution/subordination distinction can justify the intricate details of her principle of permissible harm. Why should direct but not indirect causation of evil* by a causal means to the greater good involve subordination?

Section II discusses rights and moral status. Kamm presents her understanding of kinds of moral significance that an entity can have. She argues that the highest moral status involves having rights. Kamm argues that the primary function of rights is not to protect the interests of the right-holder, but to reflect his worth. This explains why a right-holder may have a right against one sort of treatment but no right against another sort of treatment, even though identical interests are at stake. In the final chapter of this section, Kamm discusses how we should react to conflicts between rights. She claims that a concern for rights does not mandate violating rights in order to minimise rights violations.

In Section III, Kamm discusses two other distinctions that have been held to be significant by nonconsequentialists. The first of these is the distinction between collaboration and independent action. Kamm argues that if one agent, A, has justifiably collaborated with another, B, all moral responsibility for the negative consequences of A's actions may lie with B. This can make it permissible to perform harmful actions that would otherwise be impermissible (pp. 305–335). This observation throws light on a pair of famous philosophical examples as well as on some practical issues, such as physician-assisted suicide.

The second distinction Kamm considers in this section is the distinction between near and far. Kamm urges that we reconsider our understanding of the problem of distance in morality. The traditional approach to distance in morality is to ask whether we

have a stronger duty to those who are near than to those who are far. Kamm points out that our intuitions suggest that the role of distance in morality is much more complex. Our intuitions do not just reflect the distance between agent and victim; they also respond to the distances between agents, victims, threats, agents' effective means, victims' effective means. In these chapters, we see some particularly fine examples of Kamm's skill at using variation of cases to draw out the factors influencing our intuitions, demonstrating that they may not be as simple as we believed them to be.

Finally, in Section IV, Kamm considers the work of various moral philosophers whose work may be seen to present a challenge to her methodology and/or her substantive conclusions. Kamm responds to some of the most serious threats to nonconsequentialist ethics, such as the arguments of Peter Unger and Peter Singer (pp. 190–226; 401–421). These discussions are an important contribution to a vital debate about the boundaries of our ethical responsibilities.

Kamm's methodology: 'very intricate ethics'

As Kamm states, her method for finding nonconsequentialist ethical principles 'involves *very* intricate ethics' (p. 4). Kamm derives her principles by considering multiple variations of cases, manipulating small details to bring out the effect of different factors. Her aim is to find a principle that can account for all her intuitions about the cases. She explains: '... people who have responses to cases are a natural source of data from which we can isolate the reasons and principles underlying their responses... Such people embody the reasoning and principles (which may be thought of as an internal program) that generate these responses. The point is to make the reasons and principles explicit' (p. 8, footnote 4). She notes that the author, and the reader, must consider their own case-based judgements, rather than the reactions of the population at large. 'This is because I believe that much more is accomplished when one person considers her judgements and then tries to analyse and justify their grounds than if we do mere surveys' (p. 5).

Thus Kamm places a great deal of weight upon her own intuitions. Responses to cases outrank principles, so if an initially plausible principle conflicts with a case-based intuition it is the

principle that is jettisoned. Additionally, Kamm relies on intuitions at very high levels of complexity, claiming that we can reliably intuit moral distinctions between unfamiliar cases that differ only in the smallest details. This is an aspect of Kamm's work that many have found troubling. Many readers find that their intuitions simply give out after a given level of complexity. Must such readers simply give up trying to follow Kamm's arguments beyond this point – or should they cede judgement to a more refined ethical palette? Others view such reliance on intuitions as dubious even when they do have clear responses. There is a continuing worry that our intuitive responses to cases may be corrupted by self-interest or by lingering associations with superficially similar cases.

Nonetheless, Kamm's method does not, in theory, involve blind acceptance of the dictates of intuition. A vital third step remains after intuitions are analysed and principles extracted: a putative ethical principle must connect with our understanding of basic ethical concepts, such as the value of persons (p. 5). It is a shame that Kamm, as she herself admits, does not spend as much time on this final step as on the earlier ones. Many would see it as the most important part of the argument. Kamm could well respond that it requires much time and argument to extract the correct principles – and until we have the correct principles there is no point in seeking justification. Nonetheless, without the final ratification of an argument connecting her principles to basic ethical principles, Kamm's intricate investigation of intuitions will not convince those who are sceptical about whether the distinctions she considers are morally relevant.

Inviolability and principles of moral status

Several running themes connect the separate sections of the book. One of the most important is Kamm's interest in the notion of inviolability and the structure of respectful violability. For Kamm, inviolability is a status expressed by what it is permissible or impermissible to do to people.

Kamm draws a crucial distinction between what it is permissible to do to people and what actually happens to people. According to Kamm, a person's inviolability – their status as expressed by what it is impermissible to do to them – is not affected by what actually happens to them. Thus if B (or C, D, E, or F) is imper-

missibly violated, her inviolability remains the same. However, if it is permissible to violate A in order to prevent B, C, D, E and F being violated, A's inviolability, and thus her status, is diminished. In fact, the status of all six persons is diminished, for any inviolability possessed by A in virtue of being a person is also possessed by the others and vice versa. (pp. 28, 271)

This argument might be taken to support two conclusions: a weak conclusion and a strong conclusion. The weak conclusion rebuts a common objection to victim-based or rights-based theories of constraints on conduct. The objection claims that insofar as we are interested in features of the victim or in his rights, we should aim to minimise violations. If a constraint on killing persons as means to the greater good is based on the badness for a victim of being treated as a means, we should be willing to kill one person as a means to prevent five people being killed as a means. Similarly, if we are concerned with rights, we should be willing to violate one person's right to prevent another five people having the same right violated. However, constraints and rights do not seem to function like this. These objections can be used to suggest that nonconsequentialist constraints on conduct should be grounded in features of the agent rather than features of the victim, or in duties rather than rights.

On the less ambitious reading, Kamm's argument demonstrates that victim-based and rights-based constraints need not have this strange implication. A victim's features may give her inviolability against a certain sort of treatment; if she has this inviolability it will not be permissible to treat her in this way even to minimise violations. In the context of rights, a slightly stronger reading would imply that a theory of rights *cannot* have this implication, for if we were required to violate a right to minimise violations of that same right, no-one could truly be said to have the right in question (p. 271). Kamm's argument successfully establishes both these weak conclusions. Consideration of the logic of inviolability allows a victim-based approach to resist a commitment to minimisation of violations.

However, Kamm's argument may also be taken to support a stronger conclusion: the conclusion that the very logic of inviolability supports a nonconsequentialist constraint on harming. According to this version of the argument, because of the feature of inviolability highlighted above the inviolability of all persons (including those who are allowed to die) is higher if it is impermissible to kill some persons (at least in certain ways) in order to

save a greater number. Constraints on killing raise the moral status of all persons; requirements to save the greatest number lower the moral status of all, even those saved.

Kamm seems to support this stronger conclusion. She argues against the claim that creatures would also have a higher status if we were required to kill one of them in order to save many, claiming that 'if the fact that a greater number of people can be saved makes the sacrifice of one permissible, this does not speak to the status of any person as an individual' (p. 29).

For Kamm, a creature's status can only relate to what is permissible or impermissible in virtue of the creature's own individual properties. A creature's status is not affected by permissibilities relating to properties of groups. 'The status of persons *qua* persons is a function of what is true of any one person. If you should be saved simply because you are in a group with more people, this does not indicate that you or the others as individuals have higher saveability, but only that the numbers of people could affect what we should do' (p. 254). Thus, if persons have protection against being killed to save others, all persons (including those left to die) have higher moral status; if a large group of persons has protection against being left to die to avoid killing one, no person has higher moral status.

However, there may be a 'saveability' constraint that both increases the moral status of persons *qua* persons and demands sacrifice of one to save many. Consider the following principle:

Save: No person or persons can be killed or allowed to die unless the cost to the agent is too great or the only alternatives involve an equal or greater number of persons of equal moral status being killed or allowed to die.

Although this principle is constrained by consideration of numbers – we are let off from preserving the life of one if this is the only way to preserve the life of many – it provides protection to each person as an individual. Kamm's own constraint on killing is responsive to numbers: for if we are faced with a choice of killing one and killing five, we must kill the one (p. 142).

Contra Kamm, Save seems to be a non-paradoxical principle reflecting the moral status of persons. The logic of this constraint against allowing persons to die is the same as the logic of Kamm's constraint on killing. Either all persons are protected by Save or none are: thus, if morality permits leaving B, C, D, E, and F to die

because saving them would involve killing A, no person has the kind of moral status reflected by Save.

Kamm's discussion of the logic of inviolability has not shown that her own principle of permissible harm gives persons higher moral status than Save does. If Save holds, then persons have increased saveability (because it is impermissible not to save them except under certain conditions) but decreased inviolability (because, as Kamm points out, the inviolability of all persons decreases when morality sanctions harming). If Kamm's constraint holds, then persons have increased inviolability, but decreased saveability. Kamm must show why protection against being harmed is a better reflection of high moral worth than protection against being allowed to suffer avoidable harm. Consideration of the logic of inviolability does not support the non-consequentialist constraints on harming. Kamm's argument has most force when understood as a rebuttal of the above objection to victim-focused constraints on harming.

Kamm's method may not appeal to everyone. There is bound to be widespread disagreement about the intricacies of her ethical principles, about both intuitions about cases and justification. Nonetheless, *Intricate Ethics* is a richly rewarding book, a highly insightful discussion of some of the central issues in nonconsequentialist ethics.

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