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Personal sovereignty and our moral rights to non-interference

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Personal Sovereignty and Our Moral Rights to Non-Interference

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Abstract

In this paper, I defend the inviolability approach to solving the paradox of deontology against a criticism raised by Michael Otsuka.

The paradox of deontology revolves around the question whether it should always be permissible to infringe someone's right to non-interference when this would serve to minimize the overall number of comparable rights infringements that occur. According to the inviolability approach, rights to non-interference protect and give expression to our personal sovereignty, which is not advanced through the minimization of rights infringements. This seems to dissolve the paradox. Otsuka, however, contends that the proposed solution may rely on too narrow an understanding of personal sovereignty. He suggests that personal sovereignty may come with an enforceability dimension that undermines the inviolability approach.

While I agree with Otsuka that enforceability is an important aspect of personal sovereignty, I argue that properly construed, the enforceability dimension of personal sovereignty does not undermine the inviolability approach.

1 Introduction

In this paper, I defend the inviolability approach to solving the paradox of deontology against a criticism raised by Michael Otsuka.

The paradox of deontology revolves around the question whether it should always be permissible to infringe someone's right to non-interference when this would serve to minimize the overall number of comparable rights infringements that occur. According to the inviolability approach, rights to non-interference protect and give expression to our personal sovereignty, which is not advanced through the minimization of rights infringements. This seems to dissolve the paradox. Otsuka, however, contends that the proposed solution may rely on too narrow an understanding of personal sovereignty. He suggests that personal sovereignty may come with an enforceability dimension that undermines the inviolability approach. While I agree with Otsuka that enforceability is an important aspect of personal sovereignty, I argue that properly construed, the enforceability dimension of personal sovereignty does not undermine the inviolability approach.

The structure of the paper is as follows. I start by presenting the paradox of deontology (section 2) and the inviolability approach (sections 3 and 4). I then introduce Otsuka's enforceability criticism (section 5), and argue that it fails (section 6). In section 7, I discuss a criticism related to the enforceability criticism, namely that rights are valuable only to the extent that we are able to enforce them. I argue that this related criticism does not undermine the inviolability approach either. Section 8 concludes.

2 The Paradox of Deontology

Consider the following decision situation:

The Murder Trolley Case.¹ A vicious killer has tied five people to a trolley track and directed a runaway trolley towards them. You are standing on a bridge across the track with a massive man standing next to you. You have two options: you can either do nothing, in which case the trolley will hit and kill the five. Alternatively, you can push the massive man from the bridge and onto the tracks, in which case the trolley will hit him before it reaches the five. This will crush and kill the massive man, but it will also bring the trolley to a halt before it reaches the five. Is it morally permissible to push the massive man?

Most subjects faced with this question think it is not.² They think that the massive man has a right not to be killed, a right that is not permissibly infringeable³ under the circumstances of the case. Can this view be justified? One might think that the massive man has a right not to be killed because it would be bad if he were killed. More generally, one might think that people have rights against being killed because killings are bad, and, for that reason, ought not to occur. Yet if this is correct, it seems that in the specific setup of the Murder Trolley Case, you should in fact be permitted to push the massive man. That way, you would be able to ensure that only one instead of five killings occur, thus keeping the badness of what is happening to a minimum.

Robert Nozick has argued that the problem just raised applies to all moral rights to non-interference.⁴ Rights to non-interference protect us by making it impermissible to harm us against our consent. In doing this, they act as “side constraints”⁵ on action: from any agent’s set of feasible alternatives, they eliminate as impermissible those actions which would infringe others’ rights. One might suppose that rights⁶ rule out actions as impermissible on grounds that these actions are bad and ought to be prevented. But if this were correct, rights would have to follow a *minimization logic*: they would *always* and *necessarily*

have to be permissibly infringeable for the sake of preventing more numerous infringements of the same right. If they weren't infringeable in this way, rights would risk defeating their own purpose. However, if our intuitions about cases such as the Murder Trolley Case are correct, rights do *not* in fact follow a minimization logic. Instead, it is at least sometimes wrong to infringe a right to keep a higher number of comparable rights from being infringed.

How can we resolve this inconsistency between the presumed purpose of our rights to non-interference and our intuitive judgments about specific cases? Should we accept that rights ought to follow a minimization logic, and dismiss our intuitions about cases such as the Murder Trolley Case? Or is there a way of understanding the purpose of rights that allows us to make sense of our intuitive judgments? In line with standard terminology, I will refer to this problem as the *paradox of deontology*. While Nozick suggested that an appeal to our “inviolability”⁷ might provide the key to solving the paradox, it was Frances Kamm⁸ who developed Nozick's suggestions into the fleshed out *inviolability approach* that will be presented in the next section.

3 The Inviolability Approach

The core idea of the inviolability approach to solving the paradox of deontology is that rights put restrictions on action not primarily to prevent the occurrence of something bad, but to protect and give expression to our *inviolability*. In essence, our inviolability and our moral rights to non-interference⁹ are two sides of the same coin. The smaller the set of circumstances under which it is permissible to harm us against our consent, the more stringent our rights to non-interference, and the more inviolable we are. If rights protect our inviolability, there is thus nothing self-defeating about a right that must not be infringed for the sake of preventing more numerous infringements of the same right—such a right simply means that we are more inviolable than we would otherwise be.¹⁰

Inviolability forms part of the moral standing we enjoy as individuals, i.e. our *moral status*. An individual's moral status fixes how that individual should

be treated; it delimits the kind of treatment the individual is owed. To respect an individual's moral status is to live up to the moral requirements that the individual's presence imposes on those around her.¹¹

Inviolability as part of our moral status is a measure of our moral significance. The more inviolable we are, the more stringent the moral constraints that others have to observe when dealing with us, and the higher our significance. Kamm puts the point as follows: "Individuals whose rights stand as a barrier to action are more potent individuals than they would be otherwise. There being rights and constraints with high thresholds is a mark that the person who has them is a stronger, more valuable type of thing [...]."¹²

Importantly, it does not lower our inviolability when someone violates our rights, or harms us impermissibly. Nor does it promote our inviolability when someone prevents our rights from being violated. It is the details of our moral status that determine how inviolable we are, and these details remain the same whether or not we are treated in accordance with them.¹³

To illustrate this with the Murder Trolley Case, consider the five people tied to the track. If they are killed, they are thereby *mistreated*—because each of the five has a certain moral status, the killer wrongs them by killing them for his sadistic pleasure. By killing his victims, the murderer therefore disregards their moral status. But to disregard someone's moral status is not to lower it: whether or not the five are killed, each of them is a morally significant being who ought not to be killed for fun. Similarly to what goes for the murderer and the five, whether you push the massive man does not affect his moral status. His status is affected, however, by whether it is *permissible* to push him. Once we have settled on an answer to this question, we have settled a fact about his moral status, and, by extension, about the moral status of each of us (see note 9). If it is impermissible to push him, the set of circumstances under which morality condemns our being harmed against our consent is larger than it would otherwise be, and we are more inviolable. Admittedly, if morality condemns pushing the massive man, then respecting his inviolability comes at the cost of the five people on the track having their rights violated. But this

does not lower our inviolability, as it remains true that the five ought not to have been killed. The murderer should neither have tied them to a track, nor sent a trolley towards them. If you must not now push the fat man, morality condemns the only available course of action that would save the five, but this does not mean that it endorses their being killed. By analogy, the fact that you must not cheat on an exam does not imply that it was admissible not to study for it, or that there is nothing wrong with flunking it.

As sketched, the inviolability approach provides a *possible* solution to the paradox of deontology, but it raises a number of questions as well. First, it is not clear what reason we have to think of ourselves as highly inviolable. Is there anything that could plausibly give rise to our moral status as highly inviolable beings? Second, what is the point of having a moral status that makes it wrong to harm us, when as a consequence of this, more of us may actually be harmed? Third, our inviolability seems high, but it does not seem maximal. What determines its limits? Unless these questions have satisfactory answers, the inviolability approach fails to offer a compelling solution to the paradox.

4 Inviolability and Rational Agency

A long line of thinkers inspired by Kant argue that our stringent rights to non-interference derive from and are justified by our capacity for rational agency, which allows us to set goals for ourselves and act purposefully, thus enabling us to live our lives in accordance with our own ideas of the good. Their basic idea is that as rational creatures, we value high inviolability as a an important aspect of our autonomy, not as a way of minimizing the harm that we must expect to suffer. In Warren Quinn’s words:

“A person is constituted by his body and mind. They are parts or aspects of him. For that very reason, it is fitting that he have primary say over what may be done to them—not because such an arrangement best promotes overall human welfare, but because any

arrangement that denied him that say would be a grave indignity. In giving him this authority, morality recognizes his existence as an individual with ends of his own—an independent *being*. Since that is what he is, he deserves this recognition. Were morality to withhold it, were it to allow us to kill or injure him whenever that would be collectively best, it would picture him not as a being in his own right but as a cell in the collective whole.”¹⁴

Succinctly put, the point is this: high inviolability puts each of us in charge of their own life by making us sovereign over the “territory” that consists of our bodies and minds. Insofar as we are rational beings who aspire to autonomy, this is something we value independently of its effects on our welfare.

If this is right—as I suppose it is—it may appear that we should be maximally inviolable, or that it should always be impermissible to interfere with us against our consent. But Kamm has argued that this need not be the case, as our rationality is not our only morally relevant feature.¹⁵ Another relevant feature is *sentience*, or the fact that a human person is “a complex, feeling creature who cares about whether it lives or dies.”¹⁶ It is plausible that our sentience grounds a moral concern with what actually happens to us, thus underpinning the idea that in cases such as the Murder Trolley Case, it should be morally permissible to promote the general welfare by minimizing rights infringements. Conflicts between *respecting rights as constraints on action* and *minimizing rights infringements* can then be understood to reflect an underlying conflict between the moral implications of our rationality and our sentience—the former giving rise to the value of personal sovereignty, the latter grounding a concern with the general welfare.¹⁷ Depending on the details of the case, either side may prove more weighty.¹⁸ In the Murder Trolley Case, if it is impermissible to push the massive man, personal sovereignty “wins out” against welfare considerations, in the sense that from a moral point of view, it is more important to let the massive man have the final say over what should happen to him than it is to enable a net saving of four lives. Once we regard the Murder Trolley Case as

such a conflict of values, we can see that there is nothing self-defeating about resolving the conflict in favour of personal sovereignty.

5 The Enforceability Criticism

Once we employ the value of personal sovereignty to create a connection between our rationality and the inviolability our rights to non-interference endow us with, we are able to give plausible answers to a number of questions the inviolability approach raises. But it is still not clear whether the inviolability approach provides a viable solution to the paradox of deontology.

So far, I have argued—following Kamm and others—that high inviolability puts us in charge of our lives by making us sovereign over the territory of our bodies and minds. This suggests that “inviolability” and “personal sovereignty” are interchangeable terms. But is this correct? Michael Otsuka argues that “personal sovereignty” would seem to be a more encompassing concept than “inviolability”.¹⁹ More specifically, he claims that personal sovereignty would seem to include not only rights to non-interference, *but rights to enforce such rights as well.*²⁰

Otsuka’s claim seems conceptually correct. Suppose I harass another person by shoving him around and punching him, thus disrespecting his rights. Now suppose that the moral rules that governed us were such that neither my victim—let us call him Bob—nor any bystanders had any right to try and restrain me, or to fight back in one way or another. If under such circumstances some bystanders came up to me and told me that I ought to stop harassing Bob, they could appeal to Bob’s inviolability, but not to his sovereignty. They could coherently argue that it is wrong to harass Bob because he is not violable in this way; they could point out that Bob is a morally significant being who is owed respectful and considerate treatment. But they would be confused if they claimed that I was wrong to harass Bob because of the personal *sovereignty* he enjoyed over the territory of his body and mind. Unlike inviolability, personal sovereignty seems at least partly to consist of a moral authority to keep intruders

in check. If we were all like beautiful flowers or newborn babies—beings that it is wrong to violate, but who lack all ability to enforce their inviolability—it would seem a category mistake to refer to us as “sovereign.” In other words, it seems correct to say that an inviolable entity is sovereign only if someone capable of defending it may at least sometimes rightfully do so.²¹

Otsuka argues that if he is right to suggest that personal sovereignty consists of rights to non-interference as well as enforcement rights, then our sovereignty increases not only with our inviolability, but also with our moral authority to enforce this inviolability. He proposes to construe the enforceability dimension of personal sovereignty as follows: first, our authority to defend ourselves would seem to consist of and increase with the enforcement rights we have against those who threaten to illegitimately interfere with us.²² Second, it would also seem to consist of and increase with the rights we have against innocent bystanders.²³ Otsuka’s idea is that if there are certain ways in which we may permissibly interfere with an innocent bystander to protect ourselves against illegitimate interference, then the enforceability dimension of our sovereignty is strengthened because we have *more means* available with which we may enforce our inviolability. Lastly, Otsuka thinks that the enforceability dimension of personal sovereignty extends to others intervening on our behalf.²⁴ That is, he suggests that our inviolability may become more enforceable as others have more extensive rights to defend us against illegitimate interference, either by being permitted to interfere with the attacker, or by being permitted to interfere with innocent bystanders to shield us from the attack.²⁵

Otsuka does not want to suggest that our sovereignty increases *whenever* its enforceability dimension is strengthened. Instead, he points out that the enforcement rights we have against innocent third parties strengthen the enforceability dimension of personal sovereignty while weakening its inviolability dimension. Only if they strengthen its enforceability dimension *more* than they weaken its inviolability dimension would they seem to make us *overall* more sovereign. Put differently, Otsuka suggests that enforcement rights held against third parties would seem to strengthen our overall sovereignty only subject to

a proportionality constraint.²⁶

With the help of the Murder Trolley Case, we can get a better grip on the details of Otsuka's conceptualization of personal sovereignty. To Otsuka, if it is permissible to push the massive man, then there is a sense in which our sovereignty would seem to increase even though our inviolability suffers. More specifically, if you are permitted to intervene on behalf of the five people trapped on the trolley track, you are authorized to enforce their rights not to be killed via the means of harming the massive man, which—according to Otsuka—would seem to strengthen the enforceability dimension of our sovereignty.

But what happens to our sovereignty all things considered? How are the negative effects on inviolability to be traded off against the positive effects on enforceability? Otsuka thinks that the inviolability dimension of personal sovereignty appears slightly weightier than its enforceability dimension, so that when “other things [are] equal,” inviolability “makes a greater contribution to our personal sovereignty” than enforceability.²⁷ His idea is that we are more sovereign if it is impermissible to kill one innocent bystander in order to enforce one other person's right not to be killed. But once “other things are not equal”—or once a fairly minimal principle of proportionality is respected—Otsuka thinks that a strengthening of the enforceability dimension can result in an increase in personal sovereignty even if that strengthening comes at the cost of lower inviolability.²⁸ By way of example, he thinks that the overall effect on our sovereignty would seem to be positive if it became permissible to “non-lethally maim one innocent bystander” to enforce another person's right not to be killed.²⁹ Similarly, he appears to think that the overall effect on our sovereignty would be positive if it became permissible to kill one innocent bystander to enforce *several* other people's rights not to be killed.³⁰

In sum, Otsuka suggests that there are two dimensions to personal sovereignty, an inviolability dimension and an enforceability dimension. The two can come into conflict, in which case we can increase one only at the expense of the other. To Otsuka, it seems that we maximize overall personal sovereignty if we resolve such conflicts in favour of whichever dimension makes the weightier contribution

to personal sovereignty given the details of the case.

If we accept Otsuka's suggested conceptualization of personal sovereignty, the inviolability approach is undermined. The inviolability approach depends on the assumption that it *strengthens* personal sovereignty if our rights to non-interference do not follow a minimization logic. But if Otsuka's ideas are correct, it *weakens* our sovereignty if our rights do not follow a minimization logic, as the negative effects this has on the enforceability of our rights outweighs the positive effects it has on our inviolability.

6 Why the Enforceability Criticism Fails

In this section, I argue that the enforceability criticism fails. While Otsuka is right to insist on an enforceability dimension to personal sovereignty, he goes wrong in suggesting to extend that dimension to enforcement rights held against innocent third parties. Once this mistake is corrected, the enforceability dimension of personal sovereignty ceases to undermine the inviolability approach.

To see why the enforceability dimension of personal sovereignty should not extend to enforcement rights against innocent third parties, we need a better understanding of the concept of personal sovereignty. In an attempt to gain such an understanding, I will next turn to political philosophy, where the concept of *state sovereignty* is well established.³¹

According to Dan Philpott, a sovereign state exercises "supreme authority" within the borders of its territory, "but also, by definition, with respect to outsiders, who may not interfere with the sovereign's governance."³² Philpott notes that "quintessential modern sovereignty" is absolute, so that the state's authority extends "to all matters within [the state's] territory, unconditionally."³³ This fits well both with the general idea that there is an inviolability dimension to personal sovereignty, and with the more specific claim that our personal sovereignty increases with the stringency of our rights to non-interference. But what about the idea that there ought to be an enforceability dimension to sovereignty? In a *system* of sovereign states, does each state have a right to

enforce its authority over its territory?

Hugo Grotius was the first political philosopher to provide a systematic account of the natural law between sovereign states.³⁴ In *De Jure Belli ac Pacis* (published in 1625), Grotius argues that it is legitimate for a sovereign state to wage war against a state that has attacked it. However, the victim state must not involve neutral states in its war effort if they do not agree to being involved, as neutral states may “rightly look to their own interests and stay on the sidelines.”³⁵ It seems that all commentators, from Grotius onwards, agreed that victim states have certain enforcement rights against their attackers, but none against uninvolved third parties.³⁶ Why is this so? In a nutshell, because enforcement rights against attackers, but not enforcement rights against third party states, are compatible with the absolute sovereignty of states.

To see this more clearly, consider a system of absolutely sovereign states. In such a system, each state enjoys exclusive authority over all matters within its territory, and other states have a duty not to interfere with its governance. To argue that a victim state has enforcement rights against third party states is to deny that the third party states enjoy exclusive authority over all matters within their territory, which amounts to denying that these states are *absolutely* sovereign. Suppose a victim state (or another state choosing to come to the victim’s aid) asks a neutral state’s consent to use some of the neutral state’s resources in an effort to fight off an attacker state. Suppose the neutral state denies access to its resources, as it does not wish to get involved. If the victim state (or another state choosing to come to the victim’s aid) may nevertheless go ahead and put the neutral state’s resources to use, then the neutral state does not enjoy *exclusive* authority over *all* matters within its territory.

The situation is different when we are dealing with attacker states. An attacker state has violated (or is threatening to violate) its duty not to interfere with the exclusive authority that other states enjoy over their territory. By choosing to overstep its authority, an attacker state makes itself *liable* to defensive action: because it shows insufficient respect for the authority of others, it at least temporarily loses some of the authority over its own territory so that order

can be restored.³⁷ Even in a system of absolutely sovereign states, each state's exclusive authority over its territory is thus conditional on respectful behaviour towards others. But why refer to the sovereignty of states as "absolute" if that sovereignty comes with a condition? The political philosophers' choice of terminology seems to me sensible in light of the fact that a state's authority over its territory remains exclusive (i) independently of how the state handles its internal affairs and (ii) independently of what happens around it. Whether a state's authority over its territory remains exclusive is in that sense entirely within the state's control.

In sum, the absolute sovereignty of states leaves conceptual room only for enforcement rights held against liable attackers. For our purposes, this is interesting in two ways. First, it suggests that absolute or "maximal" sovereignty is not a matter of extensive enforcement rights. While *some* enforcement rights against attackers seem necessary for sovereignty, we can refer to a state as absolutely sovereign without having to suppose that its enforcement rights are especially extensive or in some sense maximal. As long as a state has sufficient enforcement rights, what determines the extent of its sovereignty is simply the exclusivity of its authority over its territory, so that a state is absolutely sovereign if its authority extends to all matters within its territory, without exception. *Exclusive authority over a territory* thus sits at the *core of sovereignty*; enforcement rights play a mere supporting role.

Second, the fact that absolute sovereignty is incompatible with enforcement rights against uninvolved third parties suggests that the existence of such rights would not actually add to our sovereignty, but would instead detract from it. If the core of sovereignty is exclusive rightful control over a territory, a measure that encroaches on this core cannot boost sovereignty.

If we apply these insights to personal sovereignty, they suggest a revised picture of the concept. According to this revised picture, our rights to non-interference sit at the core of personal sovereignty. Personal sovereignty increases with the stringency of our rights to non-interference, or with the exclusivity of the authority we enjoy over our bodies and minds. If our sovereignty were

absolute, our inviolability would be maximal—it would never be permissible to interfere with us against our consent. But rights to non-interference do not exhaust personal sovereignty. Unlike beautiful flowers, we have the *capacity* to defend ourselves and each other against illegitimate interference, and our moral status as personally sovereign creatures means that we are *morally entitled to make use of this capacity*. Those who illegitimately interfere with us become liable to defensive force, which is to say that at least temporarily, they lose some of their rights to non-interference. Enforcement rights held against liable attackers do not limit the authority each of us enjoys over their territory: by disrespecting the moral status of others, attackers choose to make themselves more violable; they cause their moral status to be diminished, so that the proper moral order may be restored.³⁸

The situation is different with enforcement rights against innocent bystanders. Because innocent bystanders have done nothing to become liable to defensive force, enforcement rights held against them would impose limits on the authority we enjoy over ourselves, and would thus encroach on the core value of personal sovereignty. It follows that rights against innocent bystanders need to be excluded from the enforceability dimension of personal sovereignty. To strengthen personal sovereignty is to give each innocent individual *more authority over him- or herself*, not to restrict that authority in order to give individuals rights over each other.

If making it permissible to harm innocent bystanders does not increase personal sovereignty, then making our rights to non-interference permissibly infringeable for minimization's sake does not increase personal sovereignty, and the inviolability approach does not suffer from the fatal flaw imputed to it by the enforceability criticism.

Crucially, none of this is to say that we should be maximally inviolable, or that it should never be permissible to harm innocent bystanders against their consent. As I have suggested in section 4, other values may sometimes conflict with the value of personal sovereignty, in which case either value may win out. The only thing that I have tried to show here is that we cannot strengthen

personal sovereignty by making it permissible to harm innocent bystanders. If the core idea of some value is that individuals should have certain rights, we cannot promote that value by curtailing these very rights.

7 Effective Rights to Non-Interference

Even if the enforceability criticism fails, a structurally similar criticism still looms large. It starts from the observation that if personal sovereignty is simply a matter of our moral status, then being personally sovereign—just like being inviolable—should not be our exclusive concern insofar as we are rational beings. In section 4, I have argued—following a long line of thinkers inspired by Kant—that insofar as we are rational beings, we value autonomy, and that personal sovereignty is an important aspect of autonomy. But if personal sovereignty is merely an aspect of autonomy, then other considerations are important for autonomy as well. Someone could argue as follows: “To lead an autonomous life, we must be able to count on not being interfered with against our consent. If others frequently interfere with us against our consent, or if they inflict grave harm on us, our autonomy is undermined. It is thus an important aspect of leading an autonomous life that we have largely *effective* rights to non-interference. Rights to non-interference and enforcement rights are important not only because they give expression to the fact that we are sovereign beings who are morally entitled to lead an autonomous life; they are important also insofar as they allow us to ensure that we will not in fact be interfered with against our consent.³⁹ All things considered, we may lead more autonomous lives if we have less extensive rights to non-interference than we are more often permitted to enforce than if we have more extensive rights that we are less often permitted to enforce.”

The basic thrust of this argument seems to me correct. If it is, then our sovereignty should sometimes be limited not merely because as sentient creatures, we care about the general welfare (see section 4), but also because as rational creatures, we care about the effectiveness of our rights to non-interference.

Consider the following example. Intuitively, it clearly seems permissible to step on someone's toes against that person's consent to save five people from being killed by a vicious murderer. If this intuitive judgment is correct, our sovereignty is less than absolute. On the one hand, it seems justified that our sovereignty should be limited in this way because of the large net gain in welfare this allows us to bring about (see section 4). On the other hand, it also seems justified that our sovereignty should be limited in this way for autonomy's sake. By trying to kill the five, the vicious murderer arrogates to himself a decision about their fate. If we are permitted to stop him even though this involves trespassing on someone's body, then we are able to put the five back in control over their lives, thus promoting their autonomy. Moreover, if the murderer manages to kill the five, he robs them of all future opportunities to pursue their own plans and projects. If we are permitted to stop him, we are able to preserve these future opportunities for them, thus promoting their ability to lead a self-determined life. It is true that our authority over our bodies is not as exclusive as it could be if there are situations where we may step on someone's toes against that person's consent. But this limitation does not seem to detract significantly from our autonomy. Having even just a slightly better chance of not being killed by a vicious murderer would seem to easily make up for it.

These considerations complicate the picture presented in section 4, which gave the impression that personal sovereignty neatly captures our moral concerns insofar as we are rational beings who aspire to autonomy. It clarifies that the value of autonomy grounds a concern not only with what rights we have, but also with what is done to us. When these two considerations come into conflict, and when the latter carries more weight given the circumstances of the case, we should think of personal sovereignty as limited for autonomy's sake. This more complex picture *need not* undermine the inviolability approach, but it has the *potential* to do so. More precisely, it creates a problem for the inviolability approach just in case it is true that our autonomy is all things considered best advanced if our rights to non-interference are always permissibly infringeable for minimization's sake. Is this the case?

Consider again the Murder Trolley Case. Intuitively, it seems wrong to push the massive man. Can we make sense of this intuition if rights to non-interference should always be permissibly infringeable when this would on balance promote our autonomy?

One striking feature of the Murder Trolley Case is that if you kill the massive man, you *use him as a means* to save the five people trapped on the trolley track. If we agree with Quinn that as a rational being, the massive man is not a mere “cell in the collective whole,” but a “being in his own right” who ought to be recognized as such, we may feel that sacrificing him for the sake of the five would be especially abominable, so that morality ought not to endorse it. But even if pushing the massive man would show an especially blatant disregard for his autonomy, it is not clear that it should therefore be ruled out as impermissible. After all, it would save *five* people from having *their* autonomy blatantly disregarded by a murderer who is trying to kill them for his sick pleasure. It is true that if the five are killed, they are killed *impermissibly*—their moral status marks them out as beings who must not be killed for the thrill of it. But how significant is this consideration?⁴⁰

I believe that it is an important consideration for two reasons. The first is coherentist in nature. If at least part of the purpose of our rights to non-interference is to express the fact that we are morally entitled not to be interfered with in certain ways, then we can make sense of our intuitive judgments about cases such as the Murder Trolley Case, and are thereby provided with a reason to trust them. Our considered judgements in turn give us reason to endorse the idea which is able to explain these judgements.

But we need not stop at this narrow reflective equilibrium. If our personal sovereignty matters not only to the extent that it provides us with effective rights to non-interference, then our moral rules would seem to reflect the fact that a human person is a particular kind of moral creature whom it is morally appropriate not to treat in certain ways—to some extent regardless of the consequences. This idea is independently plausible and powerful. It accurately expresses at least one way in which we tend to think about ourselves and others

from a moral point of view.

8 Conclusion

If our moral rights to non-interference are not always permissibly infringeable for minimization's sake, we are more inviolable than we would otherwise be. According to the inviolability approach to solving the paradox of deontology, this is something we value, as it promotes our autonomy by putting us in charge of our own lives.

The enforceability criticism of the inviolability approach proceeds from the assumption that we are truly in charge of our lives only if we are permitted to defend ourselves against illegitimate interference. From this, it infers that our inviolability is valuable primarily insofar as it adds to our personal sovereignty, where personal sovereignty consists of an inviolability as well as an enforceability dimension. I have argued that these ideas are correct.

The enforceability criticism threatens to undermine the inviolability approach because it contends that the enforceability dimension of personal sovereignty includes enforcement rights not only against liable attackers, but against uninvolved third parties as well. If this were the case, our sovereignty would all things considered be higher if our rights to non-interference followed a minimization logic. But I have argued that the enforceability dimension of personal sovereignty is necessarily limited to enforcement rights held against liable attackers, and that the enforceability criticism therefore fails. To extend the enforceability dimension of personal sovereignty to enforcement rights against innocent third parties is to assume that we can become *more* sovereign as the rightful control each of us enjoys over their territory becomes *less exclusive*. This assumption is not tenable.

There is, however, a further complication. Insofar as we value autonomy, we care about rights to non-interference and enforcement rights partly because they allow us to *effectively control* whether we are being interfered with. I have shown that this fact is consistent with the inviolability approach, as it does not preclude

that there is independent value in our being *entitled* to non-interference.

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Notes

¹This case is based on Judith Thomson, ‘Killing, Letting Die, and the Trolley Problem’, *The Monist* 59 (1976): 204-217, at pp. 207-8, and Frances Kamm, *Morality, Mortality Volume II: Rights, Duties, and Status* (New York, NY: Oxford University Press, 1996), at p. 207.

²See e.g. Marc Hauser, Fiery Cushman, Liane Young, R. Kang-Xing Jin & Mikhail John, ‘A Dissociation Between Moral Judgments and Justifications’, *Mind & Language* 22 (2007): 1-21, at p. 6. When the case was introduced to the subjects of this study, they were not given any information as to how the five people on the trolley track had ended up there. They were simply told that “there are 5 people on the track” (ibid.). I agree with Thomson and Kamm that it does not make an intuitive difference to the permissibility of pushing the massive man whether the five were put on the track by a murderer or innocently got stuck there by themselves. In both cases, it seems similarly impermissible to push the massive man. See Judith Thomson, ‘The Trolley Problem’, *The Yale Law Journal* 94 (1985): 1395-145, at p. 1399, and Kamm op. cit., p. 207.

³In this paper, I follow Thomson in distinguishing between permissible and impermissible rights infringements, and in referring to the latter as rights violations. See Judith Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), at p. 122.

⁴Robert Nozick, *Anarchy, State, and Utopia* (New York, NY: Basic Books, 1974), at pp. 28-30. In this paragraph, I follow Nozick’s presentation of the problem.

⁵Nozick op. cit., p. 29.

⁶Unless indicated otherwise, I use the term “rights” to refer to moral rights to non-interference. I understand such rights as Hohfeldian claim-rights that rightholders have against other persons who have correlative duties towards them. For a discussion of the Hohfeldian analytical system, see e.g. Frances Kamm, *Intricate Ethics. Rights, Responsibilities, and Permissible Harm* (New York, N.Y.: Oxford University Press, 2007), at p. 239.

⁷Nozick op. cit., p. 32.

⁸Kamm 1996 op. cit., pp. 259-83.

⁹By “our inviolability” and “our moral rights to non-interference” I mean “the inviolability and the rights to non-interference of *human persons*.” Maybe all human *beings* have the same rights to non-interference, and are thus inviolable to the same degree; maybe there are non-human beings who are as inviolable as we are. Throughout this paper, I will simply assume what I take to be uncontroversial, namely that *at least* all human persons have the same rights to non-interference, and are thus inviolable to the same degree. Further below, I suggest (following Kamm and others) that what justifies our rights to non-interference is the fact that we are rational creatures. If this is right, then being a rational creature might be sufficient—and possibly also necessary—for being a rights-holder.

¹⁰Kamm 1996 op. cit., p. 272.

¹¹Ibid.

¹²Kamm 1996 op. cit., p. 273

¹³Ibid.

¹⁴Warren Quinn, ‘Actions, Intentions, and Consequences: The Doctrine of Doing and Allowing’, *The Philosophical Review* 98 (1989): 287-312, at p. 309 (original emphasis, footnotes omitted). See also Nozick op. cit., pp. 49-50.

¹⁵Kamm 1996 op. cit., p. 277.

¹⁶Ibid.

¹⁷It is unclear what a morality would look like that responded only to our sentience. Nozick (op. cit., p. 39) suggests that we should base our moral principles on “utilitarianism for animals; Kantianism for people”. If their sentience suffices to morally characterize non-human animals, this suggests that utilitarian principles would be appropriate for merely sentient beings. But as an anonymous referee has pointed out, a morality based on *interest-protecting rights* may be just as appropriate. For my purposes, it suffices that in minimization cases, i.e. in cases where we can protect the same welfare interests of either a smaller or a larger number of people, a concern with our sentience speaks in favour of protecting the larger number.

¹⁸An editor of this journal has pointed out that the idea of *weights* may be unhelpful here. Instead, it may be better to think of sovereignty considerations as *silencing* other considerations, in the sense that where sovereignty considerations apply, there is no room for other considerations. But while I believe that silencing sometimes occurs, it does not seem to me to occur in minimization cases, where all potential victims are by definition threatened with the same harm, and where most of us agree that minimizing rights infringements becomes permissible as the disparity in numbers becomes large enough. The “silencing metaphor” seems to me most appropriate in cases where the harms in question are very different, and where no number of smaller harms can outweigh an instance of the more serious harm.

¹⁹See Michael Otsuka, ‘Are Deontological Constraints Irrational?’ in Ralf Bader & John Meadowcroft (eds.), *The Cambridge Companion to Nozick’s Anarchy, State, and Utopia* (Cambridge: Cambridge University Press, 2011, pp. 38-58), at pp. 51-54.

²⁰Otsuka op. cit., p. 54. Note that according to the Will Theory of Rights, you only have a certain right to non-interference if you *also* have a power to choose whether to waive or enforce that right. For a Will Theorist, rights to non-interference are thus not complete without enforcement rights. See e.g. Rowan Cruft, ‘Rights: Beyond Interest Theory and Will Theory?’, *Law and Philosophy* 23 (2004): 347-397, at p. 367. In this paper, I do not want to enter the debate between Will and Interest Theorists of Rights. Since I agree with Otsuka that enforcement rights play an important part in our morality, the points I make in this paper should be consistent with versions of both the Will and Interest Theory.

²¹An anonymous referee has pointed out that this conception of sovereignty appears incompatible with pacifism. But this seems to me too quick. Pacifism is usually understood as an opposition to war and violence (see e.g. Andrew Fiala, “Pacifism,” *The Stan-*

ford *Encyclopedia of Philosophy* (Winter 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2014/entries/pacifism>). Not all pacifists think that abstaining from all forms of violence is a moral requirement at all times; many think that at least some abstentions are supererogatory or, for example, merely prudentially advisable (ibid., secs. 2.1 and 2.3). More importantly, not all means by which we may be able to enforce our rights to non-interference need necessarily be violent. Suppose someone attacks me, and I could sneak their cell phone to call the police. Or suppose the person who attacks me is much smaller than I am, and I could restrain my attacker until he or she calms down. On the conception of sovereignty defended in this paper (see sec. 6), the possession of non-violent enforcement rights may be sufficient for personal sovereignty.

²²Otsuka op. cit., p. 53

²³Ibid.

²⁴Otsuka op. cit., p. 54

²⁵Ibid.

²⁶Ibid.

²⁷Ibid.

²⁸Ibid.

²⁹Ibid.

³⁰Otsuka does not explicitly state this, but if he wants to challenge the inviolability approach to solving the paradox of deontology, he needs to be committed to it.

³¹For a discussion of personal sovereignty that is based on the assumption that we can gain an improved understanding of the concept by studying state sovereignty, see Joel Feinberg, *The Moral Limits of the Criminal Law Volume 3: Harm to Self* (New York: Oxford University Press, 1989), ch. 19. Feinberg's focus is not with the enforceability dimension of personal sovereignty, but in relevant aspects, his discussion is consistent with the claims I make. See esp. pp. 52 and 68.

³²Dan Philpott, "Sovereignty," *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2010/entries/sovereignty>, at sec. 1.

³³Ibid.

³⁴Jeremy Rabkin, *Law Without Nations? Why Constitutional Government Requires Sovereign States* (Princeton, NJ: Princeton University Press, 2005), at pp. 74-8.

³⁵Rabkin op. cit., p. 77

³⁶Ibid., p. 95. See also Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), at pp. 233 & 236-7.

³⁷As an anonymous referee has pointed out, it is a contentious issue whether the permissibility of self-defence is best explained in terms of rights to non-interference that culpable attackers lose when they attack their victims. For an opponent of this rights-based view, see Whitley

Kaufman, 'Is There a "Right" to Self-Defense?', *Criminal Justice Ethics* 23 (Winter/Spring 2004): 20-32. While I believe that Kaufman's and other objections to the rights-based view can be overcome, I must limit myself here to acknowledging the controversy without entering it.

³⁸Suppose I have a right not to be killed for fun. Further suppose that I have the following enforcement right over that right: if someone tries to kill me for fun, I may defend myself by imposing harm of size X on my aggressor, where X corresponds to roughly a punch in the stomach. This enforcement right would seem to fall short of an *appropriate* enforcement right for the right not to be killed. According to the picture of sovereignty sketched here, does this mean that I am merely inviolable, but not sovereign? Or are minimal enforcement rights sufficient for sovereignty, but my sovereignty would increase if I had "more appropriate" enforcement rights (other things equal)? I am not sure. But it is not necessary to answer this question in order to rebut the enforceability criticism of the inviolability approach.

³⁹In fact, being able to lead a self-determined life depends on more than personal sovereignty and effective rights to non-interference. Accidents, or natural disasters that harm us without violating our rights may also undermine our autonomy. The same goes for addictions and other mental afflictions, or for extreme poverty. Since none of these aspects are directly relevant to our discussion, I leave them aside here so as not to complicate things.

⁴⁰Feinberg argues that personal sovereignty figures importantly in our understanding of autonomy. See Feinberg *op. cit.*, chs. 18 and 19.