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**Article (Published version)
(Refereed)**

Original citation:

Otsuka, Michael (1997) *Kamm on the morality of killing*. [Ethics](#) , 108 (1). 197-207 . ISSN 0014-1704

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Kamm on the Morality of Killing

Morality, Mortality, Vol. 2, Rights, Duties, and Status. by Frances M. Kamm

Review by: Michael Otsuka

Ethics, Vol. 108, No. 1 (Oct., 1997), pp. 197-207

Published by: [The University of Chicago Press](#)

Stable URL: <http://www.jstor.org/stable/2382094>

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Kamm on the Morality of Killing*

Michael Otsuka

The second volume of Frances Kamm's *Morality, Mortality* provides the sustained and compelling answers of a deontologist to three questions involving the morality of killing that have been central to substantive ethics in the last twenty-five years. The first is whether there is a genuine moral distinction between killing and letting die. The second is whether there is any principled way to account for strongly held but seemingly conflicting intuitions about the permissibility of killing some and saving others in much discussed cases involving runaway trolleys, killing to obtain vital organs, and the like. The third is whether one can supply a justification of a deontological constraint against killing even though the violation of this constraint would prevent more of the same type of constraint from being violated. Kamm's affirmative answers to these questions will be familiar to those who have read her earlier articles on these topics. Nevertheless, the book greatly expands and revises her previous work and contains much new material.

I. KILLING VERSUS LETTING DIE

Part I is devoted primarily to the rejection of the claim that killing and letting die are morally equivalent. Philosophers who believe that killing and letting die are morally equivalent are notorious for arguing in the following manner. They select a pair of cases that are thought to differ in no respect except that the one involves a killing and the other involves a letting die and of which it is thought to be intuitively clear that the killing is morally on a par with the letting die. From this they conclude that, other things equal, killing is morally on a par with letting die. Many (including Kamm) have noted the obvious fallacy in this type of argument: one cannot move from the claim that there is a single case in which, other things equal, a killing is on a par with a

* A review essay of Frances M. Kamm, *Morality, Mortality*, vol. 2, *Rights, Duties, and Status* (New York: Oxford University Press, 1996). I would like to thank Timothy Hall, Frances Kamm, and Seana Shiffrin for their comments on earlier drafts of this review.

Ethics 108 (October 1997): 197–207

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letting die to the claim that killing is on a par with letting die in every case in which other things are equal.

Kamm reveals a deeper problem with some of the arguments meant to establish that killing is equivalent to letting die.¹ She notes that some pairs of cases of killings and lettings die appear to be morally on a par because that which is true by definition of a killing (or letting die) is also contingently true of the letting die (or killing) in this particular comparison. Consider the following illustration of this claim. It is (Kamm maintains) true by definition of 'letting die' that if I let you die, then you lose only your life that you would have had by virtue of my aid. It is not, on the other hand, true by definition of 'killing' that if I kill you, then you lose only your life that you would have had by virtue of my aid. There are, however, some killings of which this is true. Kamm discusses cases inspired by Judith Thomson in which you awaken to discover that you have been attached to somebody else in order to serve as his human life-support device. If you stab this person because this is necessary to terminate your service as his life-support machine, you kill him. Here the life of which you deprive him is not one he would have had without your aid. If, on the other hand, you are able simply to disconnect yourself from this person, then, in so doing, you let him die. Some would argue that stabbing the person in this case is morally on a par with disconnecting yourself from him. Even if we grant this claim, Kamm argues that we cannot draw any general lesson about the moral parity of killing and letting die from this pair of cases. She argues that this type of comparison is ill-suited as a "test" of the moral equivalence of killing versus letting die because it masks a genuine conceptual difference between killing and letting die by affixing a property that is true by definition of the one (but not the other) onto the other. Kamm maintains that a better test of moral equivalence would be one in which we compare a killing (or letting die) that contingently possesses a property that is true by definition of a letting die (or killing) with a killing (or letting die) that does not possess this property (but is otherwise identical). If we detect a difference in the moral significance of these cases, then we have evidence that a "definitional property" that distinguishes killing from letting die is morally significant and hence that killing is not morally equivalent to letting die.

Employing methodology inspired by the above remarks, Kamm argues that killings that lack the definitional property of letting die identified above (that of your losing only a life that you would have

1. Earlier discussion of this problem can be found in Kamm's "Killing and Letting Die: Methodology and Substance," *Pacific Philosophical Quarterly* 64 (1983): 297–312, and "Harming, Not Aiding, and Positive Rights," *Philosophy and Public Affairs* 15 (1986): 3–32.

had by virtue of my aid) are morally worse than otherwise identical killings that possess this property. She then notes that we can conclude that killing is worse than letting die if the following two plausible claims are also true: (1) no definitional properties make letting die worse than killing, and (2) the above definitional property of letting die does not function any differently when affixed to killings than it does on its “home ground” in the context of lettings die.²

Part 1 is a tour de force that sets a new standard for discussion of the topic of killing and letting die. Her treatment of methodological issues concerning the employment of cases in thought experiments is especially illuminating. Not only is she the first, I think, to have made the points about definitional and nondefinitional properties and about the interaction of properties with context, she has also developed these points and others with great insight and sophistication.

Kamm’s argument for moral inequivalence is not, however, beyond criticism. She appears to stack the deck in arguing for a crucial premise of that argument—the premise that it is less bad for someone to be killed if he is dependent upon the killer’s aid for life than it is for someone to be killed if he is not dependent upon any aid from the killer. In defending this premise, Kamm primarily relies on comparisons involving cases such as the one described above in which the dependent person receives aid as the result of some physical imposition upon the unwilling benefactor’s body. (This beneficiary is not, however, in any way to blame for this physical imposition.) These cases are problematic as tests of the moral significance of dependence. For the intuition that it is less bad to kill the dependent than the nondependent person might be explained by a belief that the physical imposition upon the benefactor deprives the beneficiary of any moral claim to the benefit rather than by belief in the moral significance of the mere fact that the dependent person loses only life that he would have had as a result of the killer’s aid. A better test for the moral significance of the property of depriving someone of only life that he would have had as the result of one’s aid would be a comparison involving a case that is similar to Kamm’s except for the fact that the benefactor has not been physically imposed upon.

Consider, for example, the following case. Somebody is dying from a poison that has the following curious side effect: so long as this person is suffering from the poison, the vapors from his breath contain a gas, the inhaling of which will cure a nearby person who is suffering from a life-threatening ailment of a different sort. The poi-

2. Kamm was, I believe, the first to alert philosophers engaged in moral casuistry to the possibility that (2) might be false, since a property can have an effect in one context that it does not have in another context. She first discussed this possibility of “contextual interaction” in “Killing and Letting Die.”

soned person has no duty to provide the aid that the vapors from his breath produce. If an antidote to his poison were available, he would violate no duty to aid the dependent person if he were to ingest this antidote. (Let us assume that the antidote will work only if it takes effect before he has exhaled enough of the gas to cure the dependent person.) Nevertheless, the dependent person is perfectly entitled to the benefit of breathing whatever vapors the poisoned person happens to exhale. Now imagine that the poisoned person will live only if he shoots either the dependent person or some third party who does not depend on him for his life. (Assume that the dependent person will breathe enough of the vapors to be cured even if the third party is shot.) It is, I think, a good deal less clear in this case than in Kamm's cases involving physical imposition that the fact that the one person depends on the poisoned person for life makes it any less objectionable to shoot him rather than a nondependent person. Hence, it is not clear that Kamm's comparisons demonstrate the moral significance of mere dependence.

II. THE TROLLEY PROBLEM

In part 2, Kamm formulates a Principle of Permissible Harm (PPH) that is supposed to conform to and justify our intuitive judgments of when it is and is not permissible to harm some individuals in cases where such harm is necessary if one is to save a greater number from harm.³ The PPH is offered as a solution to Philippa Foot's much-discussed "Trolley Problem"—the problem of explaining why, on the one hand, it is permissible to divert a runaway trolley car onto a side track where it will run over one in order to prevent it from running over five on the main track even though, on the other hand, it is impermissible to kill a healthy individual and remove five vital organs in order to save the lives of five in need of organ transplants.⁴ In its unqualified form, the PPH is fairly elaborate, as it must be if it is to be beyond range of the arsenal of counterexamples at Kamm's disposal. Roughly speaking, the PPH states that it is permissible to harm some when necessary to save more just in case the harm is an effect or aspect of the greater good itself that one produces. One may do (greater) good even though (lesser) harm will come of it. One may not, on the other hand, do harm in order that good will come of it (as a causal effect of the event that is harmful). The PPH explains why we may divert the trolley from the five to the one: the killing of the one is an effect of the diverting of the trolley, where this diversion is, according to Kamm, the greater good itself, since it is the saving of the five. The

3. Much of the material in these chapters is a revision of Kamm's article "Harming Some to Save Others," *Philosophical Studies* 57 (1989): 227–60.

4. Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," *Oxford Review*, no. 5 (1967), pp. 5–15.

PPH explains why we may not transplant from the one to the five: in this case, the killing of the one through the removal of his organs is not itself a good thing, but rather a harmful event that is a means of causing the greater good of the saving of the five from organ failure. Kamm also believes that one is not permitted to do harm in order that good will come of the harmful event even if the harm is merely foreseen rather than intended. She maintains, for example, that one is not permitted to throw a grenade at a trolley in order to destroy it before it runs over five if one foresees that the shrapnel from the grenade will kill an innocent bystander.

Kamm clearly advances the literature on the Trolley Problem and the issues of more general importance that this problem raises. Her counterexamples to the solutions to this problem that others have proposed are often ingenious and imaginative, and at times devastating. Her own positive proposal—the PPH—is interesting, original, and fairly plausible. I do not, however, believe that Kamm has provided enough of an explanation of what, beyond fit with her intuitions about trolley cases, motivates her claim that there is a moral distinction between harm that is an effect or aspect of a causal means to the greater good and harm that is an effect or aspect of the greater good itself. Even when judged simply by the standard of fit with intuition, I don't think the PPH is an unqualified success. Imagine, for example, that the only way to save five from suffocation who are pinned underneath a boulder is to lift the boulder off the five but up against a sixth who will thereby be crushed to death. Such removal is permitted by the PPH, since the lesser harm is the result of the greater good of the removal of the boulder itself. Now imagine that the only way to save five who are pinned underneath a boulder is to remove the boulder with a bulldozer where you foresee that the moving of the bulldozer into the vicinity of the boulder will set off a rock slide that will kill a sixth. Here the saving of the five is prohibited by the PPH, since the causal means to the greater good results in a lesser harm. Yet removal of the boulder by the prohibited method strikes me as intuitively no less justifiable than its removal by the permissible method.

III. THE JUSTIFICATION OF DEONTOLOGICAL CONSTRAINTS

Part 3 is devoted primarily to a defense of deontological constraints against killing. Deontologists place a number of restrictions on the sort of harms one may permissibly inflict on another. Kamm's PPH (as discussed in Sec. II above), for example, places restrictions on the permissibility of killing someone even when doing so will prevent a greater number from being killed. Not only are we sometimes prohibited from killing one in order to prevent others from being killed, but there are even circumstances in which we may not violate someone's

right not to be killed in order to prevent more of the very same type of right not to be killed from being violated. (Imagine that somebody has maliciously sent a trolley car toward five with the intention of killing them. I can stop this trolley, but only by pushing an innocent bystander into its path. It is wrong to kill the bystander even to prevent the murder of five.) In Kamm's terminology, a deontological constraint against killing exists just in case it is impermissible to kill in order to prevent more impermissible killings from occurring.⁵

Deontological constraints are notoriously hard to justify, since, as Robert Nozick has noted, it appears irrational that one be prohibited from violating a constraint when such violation will prevent more of the very same type of constraint from being violated.⁶ Some have attempted to justify constraints by appealing to the distinction between what one does and what one allows to happen. Bernard Williams, among others, has argued that one has a special responsibility for actions that flow from one's agency that one does not have for the actions of others, and that this is why it could be wrong to kill somebody rather than allow another to kill more.⁷ Thomas Nagel, among others, has made a similar point that distinguishes between harm that one intentionally commits and harm that one merely foresees that others will commit.⁸ Kamm rejects this sort of "agent-relative" justification of constraints that focuses on certain facts about the agent who would violate the constraint. She demonstrates, through thought experiments, that it is just as impermissible to murder one in order to prevent oneself from being the murderer of more as it is to murder one in order to prevent another from being the murderer of more. (Imagine a variation of the above trolley case in which *you* are the one who has sent the trolley toward the five and now you can prevent yourself from being the murderer of the five only by pushing an innocent bystander into its path. It seems no less wrong to push the one in this case than in the previous case.)⁹

Kamm's own justification of constraints focuses on facts about the status of the potential victims of rights violations rather than facts

5. Deontological constraints are a subset of deontological restrictions. A deontological restriction against killing also exists when it is impermissible to kill to prevent more killings (or deaths) that are not themselves impermissible (e.g., when it is impermissible to kill one in order to prevent a natural disaster from killing more) and when it is impermissible to kill to maximize the sum total of human happiness (whether or not through the prevention of more killings or deaths).

6. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 30.

7. Bernard Williams, "A Critique of Utilitarianism," in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), pp. 93–100.

8. Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986), pp. 175–80.

9. Kamm was one of the first to make this point in an earlier version of this chapter that she presented at an American Philosophical Association meeting in 1983.

about the agent who would violate the constraint. Her view is that constraints are justified because they reflect our elevated moral status as persons who are inviolable insofar as it is impermissible to sacrifice any one of us in order to realize the greater good of minimizing the violation of constraints. Our moral status as inviolable beings is greater than it would have been if it were legitimate to sacrifice any one of us for the sake of minimizing evil. Kamm emphasizes that the impermissibility of violating one person's constraint for the sake of preventing more of the same type of constraint from being violated does not imply the permissibility of the constraint violations that one is not permitted to prevent. Hence, even if we are, statistically speaking, more likely to be killed as a means when there are constraints against minimizing constraint violations, we are, morally speaking, less violable insofar as there are fewer constraints that it is permissible to violate.¹⁰

Kamm raises the interesting question of whether it is permissible to alienate one's right not to have one's constraint against being killed violated in the future. It might seem rational for all to alienate such a right if everyone has the same chance of being the victim of a constraint violation. To illustrate this possibility, Kamm presents the following example: "All six of us have eaten dinner. We discover that five dishes of soup were lethally poisoned, and one had an antidote in it. We do not know who ate what, and will find out only in an hour when the symptoms appear. We do know that using the organs of the one who ate the antidote is the only way to make a serum to save the other five."¹¹ It seems rational here for each of us to agree to be sacrificed if he should turn out to be the one who has eaten the antidote, provided that everyone else enters into the same agreement. Whether or not such agreement is rational, Kamm insists that it is impermissible on the ground that our status as inviolable individuals would be diminished if we were to alienate our right not to be sacrificed in exchange for an increase in our chance for survival. She suggests that the status that would be diminished is that of persons who are "ends-in-themselves" who are "not to be used as mere means for achieving the good of others."¹²

Part 3 contains much of Kamm's most ambitious and interesting work. Her justification of deontological constraints is probably, to date,

10. Earlier articulations of these points can be found in the following works: Kamm, "Harming Some to Save Others," "Non-consequentialism, the Person as an End-in-Itself, and the Significance of Status," *Philosophy and Public Affairs* 21 (1992): 354–89, and her discussion piece titled "Shelly Kagan's *The Limits of Morality*," *Philosophy and Phenomenological Research* 51 (1991): 903–7.

11. Kamm, *Morality, Mortality*, p. 291. (She gives Douglas Husak credit for this example.)

12. *Ibid.*, p. 295.

her most important contribution to moral philosophy. The basic idea is so simple and intuitive that it seems almost obvious. Nevertheless, it is an insight that managed to elude many outstanding philosophers who had previously devoted considerable effort to trying to determine whether deontological constraints are justifiable.

One reservation I have with Kamm's justification of constraints is that she leaves hanging, without saying enough to rebut, a serious objection to her argument that Shelly Kagan has raised.¹³ The objection is as follows. Increased inviolability is a double-edged sword: it is bought at the expense of a decrease in "saveability." As our inviolability goes up, our moral status increases insofar as less may be done to each of us for the greater good of others. But it decreases insofar as less may be done to others in order to save each of us from being violated. Saveability, like inviolability, is surely an important indication of moral status. For Kamm's argument for constraints to succeed, she must be able to show that the increase in inviolability more than outweighs the decrease in saveability.

I would also like to report the following puzzle to which Kamm's justification of constraints gives rise. According to her, our status as inviolable beings stems from "certain properties (here not enumerated) that we possess as individuals."¹⁴ She speculates that these properties have to do with our rational capacities—"that we are rational beings," "creatures who act for reasons,"¹⁵ or beings that have "a rational will, whose consent we must seek when interfering with what [such] a person has independently of imposition on us."¹⁶ She also notes that human beings are not as inviolable as they could possibly be. We would, for example, be more inviolable if our right not to be foreseeably killed (as in the trolley case), or our right not to be killed in self-defense, were as stringent as our right not to be sacrificed for the greater good (as in the transplant case). We would be as inviolable as we could conceivably be just in case it were never for any reason and under any circumstances permissible to kill or harm any one of us. My puzzlement arises from the fact that it does not appear that beings whose rational capacities (or capacities for fellow-feeling or artistic creativity, for that matter) were far greater than ours (but who were otherwise as vulnerable to death and harm as we) would be more inviolable than we in the respect that is relevant to Kamm's justification of constraints. Beings far more rational, sympathetic, or creative than we might be more inviolable in the following irrelevant respect: if some impartial outsider were forced to kill either one of us or one of

13. Shelly Kagan, "Replies to My Critics," *Philosophy and Phenomenological Research* 51 (1991): 919–20.

14. Kamm, *Morality, Mortality*, p. 273.

15. *Ibid.*

16. *Ibid.*, pp. 276–77.

them, it might be justifiable to kill one of us (just as it would be justifiable for an impartial outsider to kill a deer rather than one of us if forced to kill either one or the other). But I doubt that they would be more inviolable than we in the following relevant respect. I doubt that it would be impermissible to turn a trolley onto one of them if necessary to save five (or even two) of them from being killed, or that the moral barrier against involuntarily transplanting vital organs from one of them to save the lives of many of them would be greater than in the case of human beings. As far as I can tell, the moral principles and rules that apply to human beings would also apply to these superhuman beings. We, on the other hand, are arguably more inviolable in the relevant respect than beings with capacities inferior to ours. It is, for example, probably permissible, in some circumstances, to kill a minority of the deer in a given overpopulated herd in order to spare the majority from death by starvation, even though it would not be permissible, in analogous circumstances, to kill a minority of human beings in a given overpopulated society in order to spare the majority from death by starvation. If these observations are correct, then increases in inviolability track increases in rational (and other) capacities only up to a point—roughly that point in the evolution of capacities that human beings have reached. (As noted above, this point is not, however, the point at which inviolability is as great as it could possibly be.) But this would be an odd result. Why doesn't inviolability continue to track these capacities? And why are we so fortunate to have reached the actual limit point of inviolability?

Another reservation with Kamm's justification of constraints is that it fails to explain the full range of cases in which deontologists believe that constraints apply. It does not provide a justification for constraints where that which one is constrained from minimizing is something other than the victimization of persons. Many deontologists would, for example, insist that one should not let one student whom one has caught cheating go unpunished even if this is a necessary means to get him to reveal information that would enable one to catch five cheaters who would otherwise go unpunished. Such a constraint against letting a guilty person go unpunished cannot, however, be justified on the grounds that persons are more inviolable with it than without it. I suspect that there is a unifying account that explains why we are constrained from minimizing in this case as well as in the cases of killing and harming innocents that Kamm considers. In all these cases we recoil at the prospect of "doing evil that good may come of it." It does not seem to make much difference whether the evil that is employed as a means to the greater good is that of victimizing an innocent person or letting a guilty person go unpunished.

Finally, I disagree with Kamm's claim that we would not be permitted to alienate our constraint in the soup case. The question of permissibility should be divided into two: First, should one have a

(moral) right to alienate one's right not to be sacrificed? And second, even if one had such a right, might it nevertheless be wrong to exercise this right? The latter question presupposes the conceptual possibility of a right to do wrong. Such a right should be understood as one that offers a person the following moral immunity: others have a duty to refrain from forcibly interfering with her exercise of this right even though such interference would prevent her from doing that which she should not do.

I do not believe that any good rationale can be supplied for the denial of a right to alienate one's right not to be sacrificed. I do not believe, for example, that one can justify the inalienability of this right on the ground that those who have the right to alienate this right have a lesser moral status than those who do not. It is not hard to imagine that one's moral status might be reduced if one were to exercise one's right to alienate this right. But it is difficult to see how one's status could be reduced merely by having the right to alienate this right. (Consider the following analogy. A king's status might diminish if he abdicates the throne. But the mere possession of the right to abdicate does not diminish his status. He would not have been a more venerable king if he did not have the power to abdicate.) If anything, having the right to alienate this right enhances one's status, since it endows one with a power to bind oneself in the future in a manner that others must respect through noninterference. This power is by no means trivial, since it would give one the right dramatically to increase one's chances of survival in cases such as the soup case. In this respect, it is analogous to the power that one gains by having the sort of right that Ulysses had to ensure that he remain bound to the mast. On the other hand, deprivation of one's right to alienate this right strikes me as a paternalistic curtailment of one's autonomy.¹⁷

Perhaps it is not the mere right to alienate one's right not to be sacrificed that is thought to diminish one's moral status, but rather the exercise of this right. There are many cases in which the exercise, but not the possession, of a right is morally degrading. We each have the moral right, for example, to exchange sex with a willing party for room and board in that person's private home. The mere fact that one possesses this right is not degrading, yet it may be wrong to enter into such an agreement because it is degrading to both parties. Would it be morally degrading to enter into the agreement contemplated in the soup case? I do not believe that it would. I do not think that there

17. It is a separate question whether one is always better off with this power. In an interesting article, David Velleman has argued that one might be better off without the power to waive one's right not to be killed in much the same way as a convenience store clerk is better off without the power to open the safe at night. (See Velleman's "Against the Right to Die," *Journal of Medicine and Philosophy* 17 [1992]: 665–81.)

would be anything humiliating, exploitative, or otherwise objectionable about such an agreement. Rather, it would be an example of nothing more than the rational taking of risks by equally situated individuals where the expected gain in something that is objectively good (survival) outweighs the expected losses.

I wonder, in any event, whether Kamm needs to defend the claim that constraints may not be alienated in order to vindicate her defense of constraints. I grant that it would be an embarrassment for Kamm if such alienating were permissible, and it would in fact be irrational for us to refuse to agree to alienate all constraints against being sacrificed in the future. But I do not think this would be irrational. In the soup case, it might well be irrational not to enter into the agreement, since the expected benefit is so great: that of reducing one's chance of being killed from five in six to one in six. It does not follow, however, that it would be irrational not to enter into an agreement to alienate all constraints. It might not be irrational even if everybody shares the same chances of being the victim and the beneficiary of constraint violations. We do, after all, diminish something of importance when we alienate all constraints: our status as beings whom it is not legitimate to sacrifice. Moreover, I doubt that what we would gain from collectively alienating all constraints would in fact be nearly so dramatic as the reduction in the chance of being killed from five in six to one in six.¹⁸

IV. CONCLUSION

In summary, Kamm's book is a brilliant and powerful defense of the deontological perspective concerning the morality of killing. It is arguably the most impressive book-length treatment of substantive ethics since Derek Parfit's *Reasons and Persons* was published over a decade ago. Like Parfit, she often presents familiar problems in startling new light. Like Parfit, her painstakingly meticulous case method yields a wealth of important insights. Unlike Parfit, her conclusions are deontological rather than consequentialist. Hence, in my opinion, Kamm has the additional virtue of truth on her side.

18. It is worth noting that the *ex ante* advantage of alienating one's right in the soup case is probably much greater than the *ex ante* advantage of agreeing to an "emergency escape clause" on constraints that many deontologists would accept—one which would allow the killing of a small number of people in order to prevent some huge number greater than a million from being killed. For the likelihood that one will ever be among a million or more people whose lives can be spared by killing a small number of people is exceedingly remote.