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SHOULD WE SACRIFICE THE UTILITARIANS FIRST?

By Saul Smilansky

It is commonly thought that morality applies universally to all human beings as moral targets, and our general moral obligations to people will not, as a rule, be affected by their views. I propose and explore a radical, alternative normative moral theory, 'Designer Ethics', according to which our views are pro tanto crucial determinants of how, morally, we ought to be treated. For example, since utilitarians are more sympathetic to the idea that human beings may be sacrificed for the greater good, perhaps it is permissible (or, even under certain conditions, obligatory) to give them 'priority' as potential victims. This odd idea has manifold drawbacks but I claim that it also has substantial advantages, that it has some affinities to more commonly accepted moral positions, and that it should be given a significant role in our ethical thinking.

Keywords: designer ethics, ethical theory, universality, integrity, moral complaint, utilitarianism.

It is commonly thought that if morality is real, and is a matter of truth or falsehood, then it applies universally to all human beings as moral targets, and their moral views, as such, are not a reason to treat them differently from other people. We may disagree with these people or try to convince them, but our general moral obligations *to them* will not, as a rule, be affected by their views.[1] I propose and explore a radical, alternative moral view, which also assumes that morality is real (any of a number of meta-ethical positions may do) and in

[1] Even today people's moral views might affect the way they are treated. For example, if a person acted in a morally wrong way because he held a mistaken moral belief, he might be less blameworthy than he would have been had he acted in that way without holding any such mistaken moral belief. Or take for instance consequentialism: the consequences of my action depend on others' responses to them, which depend on their moral commitments. As a result, I might need to act differently towards a utilitarian and toward a Kantian. Another example is from medical ethics: when we are unable to obtain someone's consent to treatment, it is quite standard to say that we can treat her or enroll her in the experiment only if she would consent. But what people would consent to depends on their moral principles. People's declared views, if extreme in relevant ways, might also cause us not to hire them for sensitive positions. There are other circumstances where a person's moral beliefs matter. Yet the position I am proposing gives moral views a much broader, and indeed dominant, role, affecting our general obligations towards those holding them.

some sense universal. Yet according to this view, people's views are pro tanto crucial determinants of how, morally, they ought to be treated. Hence maxims that we would usually think to be binding, and universal, are suspended for some people and not for others, just because of what they think. For example, since utilitarians are more sympathetic to the idea that human beings may be sacrificed for the greater good, perhaps it is permissible (or, even under certain conditions, obligatory) to give them 'priority' as potential victims. The moral duty to value the survival of each person equally, for example, is suspended in the face of a person with certain views. This odd idea has manifold drawbacks but I claim that it also has substantial advantages, that it has some affinities to more commonly accepted moral positions, and that it should be given a significant role in our ethical thinking.

Let us return to the Trolley Problem (Thomson 1976). I hasten to apologize for doing so, since it is surely on the short-list, if not the outright winner, for most over-used examples. Yet its features and familiarity can help clarify the present proposal quickly and effectively. Later in the paper we will examine other, more realistic, moral dilemmas. In the Trolley Problem, five innocent people are about to be killed by a run-away trolley heading their way, which you cannot stop. You can, however, turn a switch that will direct the trolley towards another, unrelated, innocent single person who would otherwise not be hurt. If you turn the switch, this person will thereby be killed, but the five will be saved. Let us assume for the sake of discussion the 'Loop' version of the original Trolley problem, whereby the trolley would come back in a loop and kill the five unless stopped by the one who is tied on the tracks; i.e. the death of the one is a necessary means for saving the five. Should (may?) you turn the switch? Other things being equal, utilitarians will answer with a resounding Yes, deontologists with a resounding No.[2]

The proposal being put forward here, which might be called 'Designer Ethics' (henceforth DE), would be 'It depends on the views of those people'. We are assuming that all six people strongly and equally desire to live, and are otherwise similar in every relevant respect; they differ only in their ethical views on the matter under consideration. If the five people who can be saved are known to be hard-core switch-resistant deontologists returning from a conference of Trolley Problem experts, this, I claim, pro tanto lowers their claim to be saved - say, compared to the norm, or to the case in which they are similarly informed and opinionated utilitarians. On the other hand, if the sole potential victim of a switch in the tracks is a utilitarian Trolley problem expert, his case as against such a switch is pro tanto lower than would be the case with the norm, or with a similarly informed and contrarily opinionated

[2] Some deontologists will need to be presented with somewhat different examples (such as the 'Fat man & Bridge' case whereby we need to push a man from a bridge in order to stop the trolley), for the No to come forth; but this need not matter to us here. I am merely using this example in order to explain the position I am proposing.

deontologist. There is a distinction as to whether those persons can coherently or justly demand to be saved (or complain if not saved), and whether they ought, all considered, to be saved, but for DE the first is highly relevant to the second.

In any case, DE would be distinct from the other positions. For example, assume in a Trolley case that all six potential victims (the five on the main track and the one on the subsidiary track) are utilitarians. According to DE, this in itself provides good reason to opt for diverting the trolley. The DE will agree with the choice of the utilitarian as to the right action, in this case, but *for different reasons*.

DE is a first-and-second-order normative position that may be combined with the traditional normative positions, or may stand alone, depending on context (more below). The view holds that our moral beliefs and attitudes may (and perhaps ought) to track the moral beliefs and attitudes of others, who are the recipients of our moral actions and actions. The 'designer' element is both a matter of the 'patients' of our moral actions, who as it were 'design' the way in which they are to be treated; as well as our own situation, as moral agents, who need to take into account the positions of those we affect, when considering how we ought to act.

This proposal is clearly non-standard, and may seem completely morally misguided.[3] Let us review the main reasons in support of this understandable reaction, and then see if my proposal, that we give DE a significant role, nevertheless has good reasons supporting it.

I. SOME OBJECTIONS TO DE

The first argument against the proposal is that it gets *the normative situation* completely wrong. One should decide on the morals of the case depending on whether one is (to simplify) a utilitarian or a deontologist. One should imagine oneself in the position of giving advice to the person who can affect a switch in the track and, surely, the correct thing for him to do is the morally *right* thing. If utility maximization is the true overall moral aim, then one obviously should turn the Trolley towards the single individual, and save the five, and not to do so would be misguided. If deontological constraints are in place, then it would obviously be completely wrong to sacrifice an innocent person in this way. In any case, *our* moral views about the right thing to do should guide us, and certainly not the moral views of the potential victims or beneficiaries.

A second objection would focus on the central role of rationality and equality within morality. Assuming that all innocent people have equal moral standing,

[3] For some 'agent-relative' views, albeit with a more local application than the general position I am offering here, see e.g. Smilansky (2007); Scanlon (2008); Cohen (2013); Frick (2016).

they deserve *equal treatment in similar situations*. It would be outrageous, in any given Trolley sort of case, that some groups of five people would be saved and others not, and that some single individuals would be sacrificed in such situations while others are not. Put differently, either the numbers count, and quantitative considerations should determine our moral decision-making in such cases, or there are firm constraints blocking quantitative considerations in such cases, and we are forbidden to follow the numbers.[4] In any case, it cannot be that sometimes we allow and sometimes we forbid track-switching, in the same sort of case. To do so would not take seriously the equality of persons, the universality of morality, and the rationality of moral considerations.

A third form of argument focuses on the very issue of holding moral positions. A consequence of DE is that having firm moral views can *in itself* put one at greater risk as compared to others, and even result in one's death. To return to the Trolley problem, the morally uncaring, unthoughtful and uncommitted might not be sacrificed while, in exactly the same situation, those who make an effort to understand morality and commit themselves on it are thereby put at greater risk (they may also happen to benefit but this does not offset the full force of the objection). Philosophers working in ethics may be put at particular risk.

Even more disturbing is the obverse relationship between the *demandingness* of one's moral commitments and what this does to one's moral standing. Many people who hold strong moral positions are particularly principled people, who are willing to live in a principled way, and are guided by altruistic considerations. The idea that, *as a result*, those people will be (say) sacrificed, while the morally lax will flourish, is very problematic.

Fourth, there will be a cluster of more pragmatic considerations (not everyone will think that these are relevant to the case for the truth of a moral theory, but this applies to those who do think so). For example, (i) How will we know, in daily cases, what is one's normative position? Surely, for example, her view might not always be the view she professes. (ii) How will we engage in social interaction with others, when we cannot expect that they will apply a simple universal rule but, rather, their behaviour will follow their perception of the differing opinions of others? (iii) How will we treat groups of people holding different positions (say, if among the five in our Trolley case some are utilitarians and some deontologists)? Or, if the five are utilitarians and the one a deontologist, then this apparently generates an inconsistent judgment. (iv) What will prevent people from changing and even faking their purported moral positions, in a self-serving way? (v) DE might also give people a special

[4] It may be that when the numbers at stake are huge this makes a moral difference, but we are thinking here about Trolley Problem-like proportions. I have argued that in high-stakes cases the adequate way to see the typical deontological compromise is as a form of normative pluralism; see Smilansky (2003).

incentive to manipulate others so that they accept certain moral views that favour them (such as that the poor or unhealthy ought to be sacrificed for the sake of the wealthy and healthy).

Further difficulties and objections to DE will be considered below, including, most importantly, doubts as to the motivation in favour of this view.

II. SOME ADVANTAGES OF DE

This indeed is a list of substantial worries and objections. Yet I claim that much can also be said in favour of DE.

For one, DE manifests *moral seriousness*. If one espouses moral views that call for innocent people to be intentionally sacrificed, that is no light matter. One should then be ready to be sacrificed, if the relevant conditions are met. If, on the other hand, one opposes the sacrifice of some for the sake of others even when more innocent lives could be saved, that as well is no light matter. One should then be ready not to have others sacrificed on behalf of oneself, if the relevant conditions are met. How others, who hold different views from oneself, are treated, even in similar situations, should not matter: you put your life where your principles are. One knows ahead of time that, when DE is followed, one's own position will matter.

This moral seriousness will also in all likelihood manifest itself in a reduction in *hypocrisy* and in *moral complaint*.[5] The person following DE will not expect to benefit when her own principles would not lead her to merit being benefited. She will also not complain when her principles are applied to her; nor feel entitled to feel resentment. I believe that these are significant virtues. DE as it were carries the aversion to hypocrisy on its sleeve; making this fundamental to being moral.

Three, DE respects *consistency*. This might be thought to be obviously false, for will not this position treat people differently in similar situations? Indeed so, but it will be done in the name of what, according to DE, is the more important consistency - that between the person being treated and his or her views on how one ought to be treated. This might be thought to be merely begging the question, assuming DE and not offering an independent consideration in favour of DE. But my point is that DE highlights a form of consistency that we often do not take seriously enough in such contexts, between a person's avowed principles and the way she ought to be treated. Since this is something that matters to us in other contexts (e.g. of hypocrisy and integrity), we have a basis for seeing the centrality DE gives to it as a distinct advantage.

[5] For my views on hypocrisy, see Smilansky (1994); cf. Cohen (2000). For my views on moral complaint, see Smilansky (2007, 2013b); cf. Shaham (2011). Smilansky (2006) is a previous attempt to draw implications for moral theory from the moral complaint issue.

This will translate into a particular interpretation of *rationality, of equality,* and indeed of *universality*. Rationality, according to this view, tracks the moral positions of those to whom morality is being applied; their reasoning guides their treatment. Equality treats all people holding similar positions alike. And the universality of morality is likewise not being given up, but is merely seen differently: universally, all people ought to be treated in accordance to their own views as to how people in their situations ought to be treated. These points begin to address the second objection to DE that we saw above.

Four, another advantage of DE is that it seems *most closely aligned with consent and furthest from coercion*. Because utilitarians believe in sacrificing the one for the many, they have in a sense already volunteered to be sacrificed: they believe in it. The same goes for the five deontologists on the wrong side of the tracks. When we have reason to think that someone would agree to what we are doing, would consent to be treated as we are about to treat her, we are on stronger moral grounds to do it. There is a familiar argument to the effect that hypothetical consent is not consent at all. I do not need for my purposes the stronger claim that hypothetical consent is the equal of actual consent, but only that in certain sorts of situations it can be a form of consent. And this would be hard to deny, in many of the contexts that concern us. How can it be seriously denied that a view opposing intervention in Trolley-like cases, for deontological reasons, implies that one consents to not being saved when doing so would require intervention, if ones very judgment happens to apply to you, in a Trolley-like situation? What *more* needs to be said? Why does the fact that your view now applies to you generate some further requirement for your agreement?

I see no reason to align my stance here with views that see consent (and in particular actual consent) as so demanding as to be defeating of DE from the outset. Rather, I claim that there are reasons to see the intuitions behind DE (which we are in the process of exploring) as weakening views of consent that are so strong as to make DE impossible. Finally, on this matter, if someone rejects the importance of consent, then perhaps he nevertheless can be said to consent to not being treated in a way that gives much weight to his consent.

Five, this connects DE to the notion of *respect for persons*. This notion is notoriously slippery. Yet DE can lay claim to capturing at least certain senses of this notion, better than the alternative views. We can see this from what we have already noted: DE takes the moral views of individuals more seriously than other major normative theories. It says that the right thing to do to a person pro tanto tracks his or her view of what ought to be done. It takes persons to be reflective, morally serious beings, who are ready to live by (or indeed die for) their principles; wish to avoid hypocrisy, and abandon moral complaint and resentment that has no grounding in their own views. This is admittedly somewhat of an idealization of what many actual people are like, but it provides a normative guiding ideal. DE similarly takes implicit consent

seriously. It also manifests a special interpretation of respect for persons, both of oneself and of others. To respect oneself one should be ready to *accept* the consequences of one's principles. And to respect others involves, at the very least, *considering* their own principles as to how human beings are to be treated.

Six, DE is attuned in special ways to various epistemic conditions. Often there is considerable *uncertainty* about the right thing to do. Reasonably informed, highly intelligent, widely reflective individuals hold opposite views. They continue to hold them after hearing all the opposing arguments presented in the best lights. Trolley type cases are one of many examples. What, then, should be done? One common reply is that (a) you should do your best, epistemically, and then (b) just choose to treat everyone according to the normative position that seems right to you. Hopefully you will be right. But DE offers an alternative. One may track, under these conditions of uncertainty, the moral position of those at the receiving end of one's decisions and actions. One sacrifices the utilitarians who think that people should be sacrificed, before or rather than those who think that such conduct is always impermissible. This, as we saw, provides consistency with their views, and means that they cannot as a rule complain or resent their situation (after all, you are doing what they think *should* be done). Of course, not all persons hold reasonable moral views. We will note this issue later. But for now, it is significant to see how DE offers a new way of responding to the widely prevailing reasonable disagreement.

DE, as it were, shares here the burden of moral decision-making. If (or the more) one is perplexed by a dilemma, and uncertain what the right thing to do is, 'going Designer' seems a better way of dealing with radical uncertainty, than simply opting for a course of action without much confidence in one's choice, and then applying it both to people who agree with this course and to those who do not. One can interpret the DE direction here as an abdication of responsibility, but another interpretation is that such delegation involves *modesty* about oneself and one's thinking; and respect for others. It can be countered that it is not to respect others to respect their mistakes; let alone hold them against them. But even when one does not feel radical uncertainty concerning the case at hand, and holds a position favouring a certain direction (say, one is a deontologist but also sympathetic to DE), there are reasons not only of respect for others, but of intellectual modesty, to recognize that one may well be mistaken. Mixing DE elements in one's approach would not be irrational in such a situation. Admittedly this does not sidestep the uncertainty we may reasonably hold concerning DE itself. Yet it would seem difficult to deny the thought that if, instead of deciding for all people concerning (say) a Trolley problem, we will follow their lead in the way they themselves are treated, then this involves both modesty and a sharing of the burden of decision making. The point is not only to broaden the number of decision makers (which after all may include those not directly involved), but to involve those at the receiving

end of our actions, those to whom they apply. These people, DE holds, are particularly worthy of consultation, and this reduces our paternalism.

In some moral situations, various options are reasonable and acceptable. Such cases would provide a special defence of the DE outlook and language, alongside the deeper more general reasons we have already seen for following DE. When one has moral leeway, one can choose. How should one decide, in those types of cases? Again, DE offers a helpful reply. These cases include situations where an all or nothing choice has to be made, but without strong initial considerations (such as exist in Trolley type cases). For example, there is a limited supply of medicine of a certain kind, and a number of roughly equivalent potential recipients. If the medicine is divided equally among all the recipients, the dosage will not be sufficient to help any one of them. DE may then say, for example, that people who have spoken against developing or funding such medicines may be moved to the bottom of the list. For example, if the funding for the expensive medicine is public, then those who oppose such public funding should get a lower priority. Indeed, if a serious illness would afflict all and only adult libertarians, then arguably we should not publically fund very costly research to find a treatment for the libertarian disease. Similarly, those who oppose any form of experimentation on animals for medical research purposes, may be given lower priority in the distribution of scarce medical resources developed with the aid of such experimentation. On these views, the resources would not be available for distribution; or ought not to be distributed at public expense.

Another sort of case involving leeway would be when there is a range. The classic example involves punishment. Let us assume that two people deserve more or less equal punishment, in the range of 5–10 years in prison. Various considerations may be pertinent and are familiar from the literature. But there is another consideration that has hardly been noted, but should be: treat people in the way that they think that people should be treated. Retributivists who think that harsher punishments ought always to be given, arguably should receive punishment that is closer to the ten-year mark, within the deserved range, *because of their views*. Others whose views favour leniency, may receive less, for that reason.[6]

[6] If the person is a deontological retributivist who has integrity and moral seriousness, he would not object to be harshly punished if he committed an offence, but he wishes, after all, that such punishment were adopted as a universally applicable law. He might thus object to being harshly treated on grounds that his view of punishment has not been accepted as universally applicable. The DE, however, will reply that he himself is not a deontologist but rather (at least in large measure) a Designer Ethicist, and hence thinks that the sentence ought to track the various agent's views. He would insist that the retributivist cannot object or complain concerning his own treatment and, as to the treatment of others, the retributivist's positions and his own simply differ. The DE can of course also track the view concerning equal application, but my point is that the DE has leeway, and the deontologist could not complain concerning the application to himself of the harsh view concerning punishment he takes to be correct.

A different analysis applies when one is certain what ought to be done, and it does not seem to one that there is much leeway. In that sort of situation, the case for DE would be somewhat weaker. Yet, *my* certainty is not the only consideration, and in a way that DE helps us to see. The moral considerations DE captures that we saw before would often still remain. My arguments from respect for persons, or from disagreement and modesty, cannot be easily dismissed even in this context. These consideration are not obviously undermined by your being so certain about your own views: the person on the tracks might be equally certain about her differing view. Whatever one may choose to do at the end, DE considerations remain pertinent.

If, by contrast, one is pressed to choose among possible victims of alternative courses of action that (we are assuming) are *all unacceptable*, DE type of considerations would again be pertinent. For example, if one foresees that it will not be possible to avoid collateral damage in a forthcoming large military operation, but must decide which from among two groups of adults will be the possible victims, then the opinions of the potential groups matter. Those who do not care about the ethics of war, and have consistently opposed giving weight to such moral considerations, still remain illegitimate targets. Yet if such a choice among possible victims needs to be made, arguably they ought to be chosen, over the other group. In any case, the considerations that DE raises, such as moral seriousness, the concern with the possibility of moral complaint and resentment, and with hypocrisy, together with its emphasis on not benefiting from one's moral positions unduly, in addition to the arguments from respect for persons and from modesty, should be taken into account. DE may be dominant, morally, or it may not be; that would depend on the situation. Yet, as we have already seen, it will very often be morally salient.

DE will address the fourth, 'pragmatic' objection raised above, in three ways. It will (i) aim to show how this position can deal with and limit the pragmatic difficulties. For example, it can presume that people hold certain views, or ask and expect signalling of positions, or assume that one's views are one's professed views unless there are significant reasons to believe otherwise. A different strategy (ii) will be to point out the pragmatic advantages of DE. For example, that it leads people to take seriously the forming and putting forth of one's moral views; that it motivates people to take care in choosing their principles; that it reduces in most contexts hypocrisy and hypocritical moral complaint; and that it tells people not to look at how others are treated, but to seriously consider their own views and the implications of those views (for each is treated according to her principles). Finally, (iii) DE will be philosophically modest, in that it will see itself as sharing the pluralistic normative field with other normative positions, in ways that still need to be ascertained. Acceptance of DE does not amount to accepting it as the only relevant consideration. Thus it need not reject all the pragmatic objections that would follow from its complete application, but acknowledge some of these worries yet deal with

them by not opting for total acceptance of DE. It will yield to other positions, when they are better suited theoretically or pragmatically.

Thus, as a result of such considerations, and in direct opposition to the first objection above (that one morally ought always to do what seems to *oneself* correct), DE will assert that, at least sometimes, the crucial moral issue, the correct thing to follow, *is* the view of the possible recipients of moral attitudes or actions. This view, as we have just seen, has substantial theoretical and pragmatic advantages. Such a stance will initially seem intuitively unacceptable and perhaps unnatural; but that, DE will claim, is simply a reflection of our neglect of the salient moral consideration that it itself uncovers. And, Designer Ethicists will add, when we look carefully, we in fact see some anticipation of their position in other views, and indeed in common-sense intuitions.

The ancient moral injunctions of 'Do not do onto others as you would not wish done onto yourself', or 'Treat others as you would wish others to treat you', put concerns about the liability that one acquires through one's moral stance into morality. Later formulations of such intuitions, for example in the Kantian generalization test (Kant would not quite agree to this categorization of his view), have put them at the centre of our moral thinking. On the one hand, this helps to make DE less eccentric and more approachable. Yet this whole direction is not, in itself, an anticipation of DE. For, such pre-Kantian or quasi-Kantian positions view the thoughts about how we will be treated as a *methodology* for ascertaining what ought to be done *to everyone*. They help us to take seriously the process of moral reflection and codification but would not result in the sort of diversity that DE produces, whereby different people are treated differently (e.g. sacrificed or not), in accordance with their views.

Nevertheless there is a sense in which DE has a Kantian spirit to it. Indeed, in one way it arguably is even *more* 'Kantian' than Kant! After all, it respects people as moral agents to the point of truly treating each person *as a law unto themselves*. If the Golden Rule is to treat others as *you* would be treated, the Platinum Rule being proposed is to treat others as *they* would be treated.

Moreover, DE, in a sense, combines the spirit of the familiar injunctions, with the inevitable fact of reasonable moral disagreement. Given disagreement, we would not want others not to consider our views when doing things to us. 'Do not do onto others as one would not wish done onto oneself' may then be broadly interpreted as an endorsement of DE.

DE is also not a species of virtue ethics. It has, as we noted, distinct advantages of this sort and displays certain virtues. Moreover, part of the point in this view is that it *manifests* and *encourages* virtues, such as standing by our beliefs, the aversion to hypocrisy, and not complaining when one has no standing in lieu of one's views. The possibility for *a peculiar type of virtue* is also raised. By making one's views the pro tanto measure as to how one is to be treated, DE creates an option to consciously avow a view while one believes that doing so would be opposed to one's self-interest; and thus in this sense is particularly

virtuous. To clarify, DE does not necessarily make it more likely that people will avow views opposed to self-interest, although its spirit encourages them to do so (as noted in the beginning of this paragraph). The present point is that, in such situations, the avowals of Designer Ethicists would be endowed with greater moral significance than the typical avowals of others, because they would realize that these avowals may then be turned towards them, and directly operate against their self-interest. Yet DE's primary focus is not on the evaluation of the character of the moral agent, let alone on what role moral behaviour might have in establishing a good life for such an agent. Rather, like utilitarianism or deontology, DE is focussed on the right thing to do. It is just that it's interpretation of the right thing to do pro tanto follows the moral beliefs of those affected by it.

Among all the major traditional normative positions, DE may seem closest to contractualism. This term has many interpretations. One type of view (e.g. Gauthier) is akin to the idea of a subscription. In a somewhat simplified form, moral obligations exist because they have been accepted and consented to by moral agents, and reciprocity will typically be built into the contract. For example, if one commits oneself to a mutual-helping contractual agreement, then one has obligations to help the partners to the agreement, but not to others. As in DE, different people would thus be treated differently, in similar situations. Yet DE does not quite have this nature. The variety of ways in which it suggests that people be treated does not result from the issue of agreed membership in a community, from which it follows that we should treat some (members) in some way, and others (non-members) in another way. For DE, everyone is a partner; everyone has, as it were, a subscription to morality. It is only that the way in which he or she ought to be treated, depends on their moral views.

Other familiar forms of contractualism or contractarianism (Rawls, Scanlon) are more closely related to deontology, where a contractual thought experiment is the means to form the universal deontological obligations. DE is closer to such forms of contractualism. But here as well it is easy to see that DE is not a version of such views. There is no reason to think that deliberators will choose DE behind a Rawlsian 'Veil of ignorance', or that the Scanlonian project of seeking a single moral principle based upon 'reasonable rejection' would result in DE. Such views typically generate universalist moral prescriptions that directly contrast with the 'relativism of treatment' of DE.

It seems that none of the standard positions quite captures the basic intuition of DE. This view cannot be encapsulated under the more familiar views. It has contractual, deontological, and even virtue ethical aspects; as well as various consequentialist advantages and disadvantages. But it presents a distinct moral 'language' for evaluation and justification, that is Designer Ethical rather than deontological, contractual, utilitarian-consequentialist or virtue ethical. Designer Ethicists will hence often choose very differently than proponents of

other positions in moral dilemmas, for they will adjust their response to the positions of those they are confronting and affecting. Moreover, as we saw with the example of the six potential Trolley victims, even if they reach the same conclusion as adherents of another position, they will typically do so for other, namely DE, reasons.

III. THE ANALOGY WITH POLITICAL PHILOSOPHY

The idea that, in order to respect other persons, we must respect their views, has been central to many contemporary views in political philosophy. It has gained far less attention within non-political moral theory. My suggestion might be taken to be an attempt to take this idea more seriously within the non-political context as well. Reasonable moral disagreement is an unavoidable fact. In the political domain, it has certain implications – e.g. favouring democracy as a way of giving weight to others' positions. But similar reasons that require giving weight to others' view in the political domain also apply in the moral non-political domain. And indeed, when the other is the patient of my action, a potential victim of it, that seems like a pro tanto reason to give weight to his or her view, and not only to my own. So broad normative consistency should incline us as well to be sympathetic to DE.

IV. LIVING WITH DE

We have already seen how DE can be applied in different situations and under differing epistemic conditions. As with previous views, there are many questions and uncertainties as to how to work with it in practice. These are naturally exacerbated by the newness of this proposal. I will try to clarify a few further points concerning DE, and the suggestion that we add it to our normative arsenal.

All major normative positions typically lay claim to capture all of morality (many of their individual adherents are, of course, pluralistic). That seems a mistake to me; normative pluralism is much more plausible. Sometimes consequentialist considerations dominate, sometimes deontological ones. The idea of the contract is highly salient, morally, but much of morality cannot be understood through it. Likewise, virtue ethics matters but it does not capture most of what matters about morality. The general case for such normative pluralism is, however, beyond the scope of this paper (cf. Smilansky 2019). The present point is that DE makes no such 'total' claims from the outset. It has a distinct conception of rightness, but as part of a pluralistic normative framework, i.e. one among a number of distinct normative perspectives. DE does claim that in, say, a trolley situation, we pro tanto ought to be guided in our

choice by the views of the people involved, the people whose interests are to be affected. DE claims that this may be the correct way to act, in opposition to, say, the utilitarian and deontological positions. But it does not thereby completely reject the utilitarian-consequentialist or deontological considerations; it takes them into account, albeit in a different way from those proposed by advocates of the views. In particular, it takes them into account *when treating supporters of those positions*.

Since DE proposes to treat other people pro tanto in accordance with their respective views, it inherently recognises that other views may be morally acceptable. And more deeply, the view works best in combination with other views. Indeed, when confronted by Designer Ethicists the injunctions of the view will have no content, and the Designer Ethicist will need to be a pluralist. If everyone were a monistic Designer Ethicist, the theory would provide no guidance as to what ought to be done. *'Treat others in the way they think that people ought to be treated'* gains content by those others holding views that are not DE. This would be a grave fault if the view purported to provide a complete moral guidance, like a mirror with nothing to reflect. But the very point of DE, as we saw, is to push for moral seriousness, instantiate respect for persons, react to the need for modesty, and so on – through the idea of having our moral reactions to other people track their own views. This is a limitation but also, as I have claimed, a peculiar source of strength. DE helps us to see significant but relatively neglected aspects of morality, yet recognizes that it is only one, and sometimes not the most salient, type of moral consideration. As we saw, this helps DE to deal with objections, and increases its plausibility. We can see how DE can, for example, be the correct interpretation of injunctions such as 'Treat others as you would wish others to treat you', and be normatively dominant, while making way for different actual injunctions towards different individuals.

As I said, my own normative view is pluralistic, and was so even before I accepted DE. How, then, to combine DE with other normative views? I have no more systematic response than I did before DE emerged on the horizon. The determination of victims as in Trolley problems, the allocation of public resources, or the sentencing of transgressors, for example, should combine deontological, utilitarian and other sorts of considerations. To these familiar classes of considerations I now add the DE ones. DE offers a distinct moral 'language' that *enriches our normative-ethical repertoire*. Just as with the other normative positions, so here there will be questions of interpretation, doubts about the correct way to proceed, and purported counter-examples or even paradoxes that cause discomfort. But once we become more aware of DE and work out its implications, there should be no greater feelings of discomfort than is the case with the other normative theories.

It will be helpful to distinguish here between first and second order moral theories. A first order moral theory tries to state what to do in various situations

(typically without taking into account other people's commitments to their first order theories). A second order moral theory tries to say what you should do in various situations, in light of the fact that others hold different first order moral theories. DE is in this sense a second order moral theory.

This seems to open up the possibility that even those who are not normative pluralists may support DE. For example, perhaps someone can be a thoroughgoing Kantian at the first level, but accept, on broadly Kantian grounds of respect for persons, DE at the second level. In this way one could accept a second order DE, even if one is not a first order moral pluralist.[7] Arguably this follows from the broadly Kantian or deontological-contractual flavour of DE, and it is questionable whether other types of position could be second order-DEs, without also being normative pluralists. A utilitarian ought not to opt for DE unless by coincidence doing so was the best way of furthering utility; there seems to be no principled overlap here. With virtue ethics there is, perhaps, more leeway, and this has some interest. To the extent that the virtue ethicist is particularly impressed by the particular virtues of DE (that we noted above), such a virtue ethicist might be susceptible to find DE worthwhile at the second-order level.

As we have seen, DE claims that the correct way to deal with a person X may depend on X's views as to how persons in similar situations ought to be treated. It is important to see that this can be interpreted quite broadly. Narrow DE will say that utilitarians, for example, should be treated as utilitarianism recommends. To return to our stock example, when we have to choose whom to sacrifice, we may follow utilitarianism and sacrifice the utilitarian, *for utilitarian reasons*. But it seems to me that a broader interpretation is also possible; and indeed this is the interpretation DE should favour. Under Broad DE, we may be sacrificing utilitarians because that seems the morally correct thing to do, yet it need not be so *for utilitarian reasons*. When determining whom to sacrifice, we would opt for the utilitarian, even if *that* choice is not utility maximizing. That choice is in part guided by DE considerations, namely that utilitarians are ready to sacrifice people in such situations, rather than (necessarily) by utilitarian ones.

The intuition is this. Sacrificing people involves crossing an important moral line. Utilitarians are ready to do so, and that puts them among those whose views *allow* such line-crossing. When we ourselves cross this line and choose that the utilitarian be sacrificed, we need not, however, follow utilitarianism, but do so out of reasons that may be in part DE ones and not utility maximizing. This also holds for deontology, and other positions.

More broadly, the Designer Ethicist might say to the utilitarian that he, the DE, has strong anti-utilitarian views, e.g. is partly a deontologist. However,

[7] There could in principle be a third-order DE that tells us to reflect other's second-order theories.

he sometimes gives way to the utilitarian's position, for reasons of intellectual modesty as well as respect for persons. These helped him to become a partial-DE in the first place. In addition, the utilitarian's position allows the DE to do or to abstain from certain actions towards the utilitarian, which she might handle differently concerning (say) deontologists, because the DE stance permits one to treat people in ways which give weight to their own views, or the implications of those views.

It is also important to see that, in one sense, DE operates more in the form of permissions than of obligations. What I mean is this: according to this position, we are permitted to take into account Designer Ethical considerations. The way in which we treat others can be affected by their views. But it does not have to be. DE has a distinct advantage of respecting the views of persons, but there are limits as to how much she ought to track their views. There are two reasons here. The first is that, as we saw, DE operates as part of a normatively pluralistic framework and, indeed, cannot operate by itself (if everyone held only DE views there would not be what to track). So a normatively pluralistic moral agent sympathetic to DE would treat others in accordance with her theoretical commitments, which would include the possibility of tracking the views of others in the DE way, but not be compelled to do so.

Second, it is not only that the DE comes to decide as a normative pluralist, but that she has her own specific intuitions on particular cases, irrespective of theory. Views that she deems manifestly unacceptable, morally, need not be followed. For example, if someone is a cannibal, we are not obligated to eat him. Yet even in this extreme case, the 'language' of DE might be salient. Consider the example of a group that becomes stranded under harsh conditions, with no access to food and under an increasing threat of starvation. Help is on its way, but it will take weeks till the rescuers reach the group. After a while it becomes clear that the only realistic scenario involves choosing one among the group, killing, cooking and eating him or her. There might be various options to determine the person who will be sacrificed, such as a lottery. If, however, there is a cannibal among them, who has declared the acceptability of killing and eating people even when not under conditions of an extreme emergency, then arguably he or she might be directly chosen; or at least given more weight in the lottery.

DE has a relativistic component: each may be pro tanto allowed to live (or at least to be treated) in accordance with his or her view. Moreover, one can typically have a greater say on determining the moral practice of the Designer Ethicist towards oneself than on the moral practices of the proponents of other positions, merely by the view one holds. One can pro tanto affect how one will be treated. It will, however, not be self-reflexively relativistic, in that for its adherents the way to deal with people is the DE way, and those who disagree are held by this view to be mistaken. Those whose views are anti-DE will not

have *this* aspect of their views followed, insofar as one is an adherent of DE. Moreover, to repeat, the adherent of DE need not always follow or indeed respect the views of the various people holding different views; their views are a major consideration generating permissions for him, not obligations. So, DE will in some ways be relativistic and in other ways not. In any case, DE can be correctly seen as more accommodating of other (although not necessarily all) views, because their status as the views of persons pro tanto matter to how those persons ought to be treated. As we have seen, this can be a principled (e.g. respect for persons), an epistemic (modesty), and a pragmatic strength for the view.

DE thus leaves much room for reflection and judgment. Since it takes into consideration different moral views, some of which are surely mistaken (in general or in a given context), the very idea of DE, of tracking the beliefs of others, requires great care. We won't treat a person who sees himself as the center of the universe in the way that his view requires, just because he has that view. Likewise, we will not automatically accept the position of very good people, who are perhaps even too good, and who might be too ready to give up their interests and perhaps even sacrifice themselves, in cases of tragic choice.

Similar care would be required of Designer Ethicists on the epistemic front. Since the views of others matter to how the DE will treat them, trying to find out other's views would be particularly important for such a person. When not knowing their views, she will fall back on her own (non-DE) ones. But the spirit of DE will encourage people to express their views, and to care and find out about the views of others. DE will encourage dialogue.

This emphasis on reflection and judgment in particular cases means that DE is somewhat closer to particularism than are the other four major traditional normative positions. As with particularism, the weight allocated to a given moral consideration may differ, in DE, from case to case, and people who acted in the same way and even with similar (e.g. selfish) motivations will be treated differently. This will be both because of their differing views which the DE pro tanto seeks to follow; and because of the need to decide whether to follow their views if they are deemed problematic. On the other hand there is no reason to think that there will not be a large uniformity of judgment (e.g. in treating all utilitarians alike), and in any case DE does provide a general principled guidance that is distinctly non-particularist, namely, when treating others, pro tanto follow their views as to how others are to be treated.

Since, as noted, the idea is that DE will be combined with other normative views, this in itself will give moral agents a basis for rejecting certain views, and of choosing among people who hold contrasting views. Hence DE need not apply to the treatment of racists (in themselves or compared to other people), or to the choice between racist and other policy, the racist standards themselves.

For example, a deontologist who combines a DE component can reject the racism, yet also have a distinct DE type of response to the racist, if the latter complains about the way in which she is treated. *DE is one resource among others, in our moral-reflective arsenal.* The claim made here is that this resource has been unduly neglected.[8]

In order to clarify the proposal, we have focused on examples of situations of choice among people, and the giving of priority. But DE will not be limited to such contexts. Those opposing governmental educational subsidies should not receive them. It is not only that they should receive a lower priority than others, but that arguably they should not receive subsidies.[9] Their moral views ought to be respected. There would of course be limits here: even adult pacifists ought to be defended and not abandoned to the enemy. But accepting DE even in part and implementing it will make a difference. This is as it should be. One's moral views matter, and should often matter to how one is treated.[10]

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[8] The DE view of morality also, in a different way, seems to fall under the idea of 'Crazy Ethics', an idea I introduced in Smilansky (2013a). I use 'Crazy Ethics' (or CE) as a semi-descriptive term for moral views that despite being *true* (or at least plausible) are, in another sense, crazy or absurd. Although the craziness does not present a single common denominator but comes more in the form of a 'family resemblance', the crazy features share the idea that common, important, and seemingly reasonable expectations from morality are disappointed, in significant ways, leading to a surprising, discordant, and, to some extent, even irrational situation.

[9] This would also depend on the nature of their views. That their tax money will in any case go to finance such subsidies might be a countervailing consideration.

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University of Haifa, Israel