

Deontologists Can Be Moderate

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1 Introduction

Moderate deontology, the view that deontological constraints can be permissibly violated when and only when doing so prevents the occurrence of sufficiently bad consequences, has become a popular alternative to absolutist forms of deontology, which hold that deontological constraints can never be permissibly violated.¹ It is a view that many find plausible because it accommodates commonsense deontological constraints, but it also permits commonsense violations of those constraints whenever very much is at stake (e.g. it permits one murder whenever committing a murder would prevent one million comparable murders). Considering the abundance of moderate deontologists, one would suspect that moderate deontology is probably a coherent, deontological position. However, with respect to its being a deontological position at all, Saul Smilansky maintains that the view is actually pluralist, not deontological, and that we should understand deontology only in its typical absolutist form.

The objective of this essay is to show that, contra Smilansky, moderate deontology is properly understood as a deontological theory, and I hope to

¹ Moderate deontology is sometimes, perhaps more frequently, called ‘threshold deontology’ for its positing of a threshold (or thresholds) of bad consequences beyond which, as consequences get worse, deontological constraints can be permissibly violated to prevent the bad consequences. For critiques of the position, see Larry Alexander, ‘Deontology at the Threshold’, *San Diego Law Review* 37 (2000), pp. 893–912; and also Anthony Ellis, ‘Deontology, Incommensurability and the Arbitrary’, *Philosophy and Phenomenological Research* 52.4 (1992), pp. 855–875.

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accomplish some conceptual clarification in the process regarding certain aspects of the theory. In particular, I will emphasize the primacy of deontological constraints in moderate deontology, discuss the normative implications of permissible constraints violations, and conclude with a succinct explanation of a point on which I partly agree with Smilansky concerning the significance of terminology in our normative theorizing.

2 Smilansky

I will begin by briefly summarizing Smilansky's argument. Here is a quotation, which captures the crux of his view:

When a person combines consequentialist and (constraint-related) deontological elements in her thought, Kagan classifies her as a deontologist. The very existence of some deontological constraints suffices to make one a deontologist. But a person holding a 'half-and-half' position incorporating consequentialism and deontology, with the first sort of concern sometimes trumping the second and the second sometimes trumping the first, should not be called a deontologist, moderate or otherwise. The proper description of such a person is that she is a pluralist, plausibly combining concern for consequences with concern for deontological constraints. We should retain our understanding of the deontological element as pure and absolute, as far as it goes. Where it does not go (say, beyond a threshold), it does not somehow remain 'deontology' while going for the consequentialist considerations, but rather becomes consequentialist.²

The contention here is that the moderate deontologist considers both deontological constraints and consequences of actions to be morally relevant such that either kind of consideration can affect the normative status of an action, and so her position is not really a deontological one, but a pluralist one. Smilansky seems to think that we should reserve the term 'deontology' only for absolutist forms of deontology because those theories are purely deontological to the extent that they treat deontological constraints as inviolable. This is not to say that the absolutist must be indifferent to consequences (she can approve of actions that make the world a better place), but she must condemn those actions that violate constraints for the sake of consequences, something the moderate deontologist will not always do. Moderate deontology, on his understanding of it, is half-deontological and half-consequentialist, so pluralist.

Smilansky offers an example of a conflict between a deontological constraint and consequentialist concern to help clarify the issue. Suppose that the only way to prevent terrorists from destroying a major city is to punish an innocent person. Here a deontological constraint against punishing the innocent conflicts with a consequentialist concern about the fate of a major city. Smilansky asserts that if

² Saul Smilansky, 'Can Deontologists Be Moderate?', *Utilitas* 15.1 (2003), pp. 71–75, at 72. Smilansky is referring to Kagan's characterization of moderate deontology in his *Normative Ethics* (Boulder, 1998).

we opt for unjust punishment, which the moderate deontologist would likely recommend, then we might be making the right decision, but it cannot be that we are making that decision as deontologists. Punishing the innocent, he says, is a ‘paradigm of injustice’ and a ‘deontologist, *qua* deontologist, must oppose such a plan.’³

Smilansky worries that combining deontological and consequentialist considerations into one theory and dubbing it ‘moderate deontology’ risks not understanding the ‘pluralist predicament of normative ethics’, and it allows commonsense morality to be mischaracterized as deontological when, in reality, it is very much pluralist.⁴ Although it may seem that the worry is merely a terminological one, according to Smilansky, terminology matters here. Describing moderate deontology as a deontological theory is simply incorrect owing to its theoretical commitments. He concludes that we should understand deontology only in its familiar absolutist way because doing so will allow us to see moderate deontology for what it really is, a kind of pluralism.

3 Primacy of Deontological Constraints

Now that Smilansky’s position has been presented I will argue that moderate deontology is suitably interpreted as a deontological theory despite its regard for consequentialist considerations.⁵ First, the primacy of deontological constraints in moderate deontology will be examined. Recall that Smilansky describes the theory as ‘half-and-half’ because it incorporates both deontological and consequentialist concerns to the extent that either type of concern may trump the other depending on the situation (i.e. depending on whether or not a threshold of bad consequences is surpassed). While it is true that one type of concern may sometimes trump the other, I contend, it does not follow that the theory is by any means half-and-half. Smilansky understates the functions that deontological constraints serve in moderate deontology, and consequently he misrepresents the view as half-and-half.

According to moderate deontology, typically constraints should not be violated because deontological constraints are much weightier than consequentialist considerations. In fact, it has been noted that the view is regularly interpreted to posit such a high threshold of bad consequences that it would frequently (almost always, I suggest) recommend the same action as an absolutist deontology would.⁶

³ Smilansky, ‘Can Deontologists Be Moderate?’, p. 73.

⁴ Smilansky, ‘Can Deontologists Be Moderate?’, p. 75.

⁵ A quick clarification: by ‘consequentialist considerations’ I mean utilitarian-like considerations, and so these kinds of considerations conceptually exclude deontological ones. I state this to avoid any potential confusion about my discussion of consequentialist considerations since some consequentialist theories actually require that deontological matters (e.g. desert) be promoted.

⁶ Larry Alexander and Michael Moore claim that moderate deontology is similar to the ‘*prima facie* duty’ version of deontology but more closely mimics absolutist deontology in its verdicts (Larry Alexander and Michael Moore, ‘Deontological Ethics’, *Stanford Encyclopedia of Philosophy*, <<http://plato.stanford.edu/archives/spr2015/entries/ethics-deontological/>> (Spring 2015).). Also, Moore writes, ‘[T]here is a very high threshold of bad consequences that must be threatened before something as awful as torturing an innocent person can be justified. Almost all real-life decisions a GSS interrogator will

For example, in Smilansky's terrorist scenario it would be permissible on moderate deontological reasoning to punish an innocent person in order to prevent the destruction of a major city, but it would be impermissible to punish an innocent person to prevent the punishment of, say, a few other innocent persons. Of course the absolutist would prohibit punishment of the innocent no matter the consequences, but the important point is that there would be many situations in which the absolutist and moderate deontologist would actually agree on what the right course of action is (or, at least, agree on which action it would be wrong to perform), namely, any situation in which a threshold of bad consequences is not surpassed, and since such a threshold would presumably be set quite high, agreement between the two would be much more common than disagreement. So, with regard to action guidance, we can see that moderate deontology is much closer to absolutism than it is to any normative middle ground between absolutism and act-consequentialism that might appropriately be called 'half-and-half', such as one that sets constraints' thresholds so low that deontological considerations win out approximately half the time and consequentialist considerations the other half.

But, the primacy of deontological constraints in the theory is not simply a matter of frequency. That is to say, it is not a matter of how often those constraints should be respected and how rarely they should be broken. Instead, the primacy consists in the various ways in which moderate deontology emphasizes the normative importance of constraints, and the rarity of permissible constraints violations just follows from one of these ways, namely, the theory's positing of the extreme weightiness of deontological considerations. That deontological constraints may occasionally be overridden by severe consequentialist considerations does not entail that those constraints do not have great weight in the theory; they are just not absolute, as in the absolutist's theory. Thus, not only is moderate deontology not half-and-half in terms of frequency, but it is not half-and-half in terms of what matters morally from the perspective of the theorist. The simple fact that the involvement of morally disastrous consequences, such as the destruction of a major city, is required to override a deontological constraint is by itself enough to demonstrate this point.

A threshold of bad consequences beyond which it becomes permissible to violate some constraint, then, must be high enough to reflect the moderate deontologist's theoretical commitment to the primacy of deontological constraints. If the threshold were set so low that the possibility of trivially bad consequences could justify violations of such a constraint, then it would seem to follow that deontological constraints are not so critical to the moderate deontologist, and her theory might be accurately characterized as pluralist after all. I will not discuss here what the exact location of a constraint's threshold may be, but suffice it to say that because deontological constraints are given much more weight than consequentialist considerations, the moderate deontologist would have to set a threshold reasonably

Footnote 6 continued

face—and perhaps *all* decisions—will not reach that threshold of horrendous consequences justifying torture of the innocent. Short of such a threshold, the agent-relative view just sketched will operate as absolutely as absolutism in its ban on torturing the innocent' (Michael Moore, *Placing Blame: A Theory of the Criminal Law* (Oxford, 2010), p. 722, his emphasis).

high. Consider, for instance, Nagel: '[D]eliberately killing an innocent is impermissible unless it is the only way to prevent some very large evil (say the deaths of fifty innocent people). Call this the *threshold* at which the prohibition against murder is overridden.'⁷ The positing of high thresholds is a necessary condition for a moderate deontological view to qualify as deontological. To deny this claim and assert that there can be low thresholds for constraints would be to simply admit the point to Smilansky that such a view might be better understood as a kind of pluralism in light of its giving substantial weight to more than one sort of normative concern (the lower a threshold is set, the higher the amount of weight that is given to consequentialist considerations).

While it is true that the moderate deontologist's deontological commitments must be much weightier than her consequentialist commitments, it might be submitted that I am making too much of Smilansky's phrase 'half-and-half' and that his argument does not rely on a half-and-half or 50:50 ratio actually obtaining with regard to the balance of deontological and consequentialist considerations in moderate deontology. A 70:30 or 80:20 ratio might also be open to Smilansky's criticism of such a view being described as deontological when it would be more properly described as pluralist. This is because such a theory would still combine deontological and consequentialist concerns together, and it would give some amount of weight to both kinds of concern.

Not only do I agree with this interpretation of Smilansky's view, but I also agree that a 70:30 or 80:20 ratio might be problematic for a theorist who professes deontology yet endorses one of these ratios regarding the weightiness of deontological to consequentialist considerations. Nevertheless, this should not bother the moderate deontologist precisely because neither these ratios nor anything close to them accurately represents her theory, and furthermore it is questionable whether or not Smilansky's use of 'pluralism' in this context is a good one, a point to which I will return toward the end of the essay. Concerning the ratio of weightiness of deontological to consequentialist considerations, no card-carrying deontologist would endorse any of the aforementioned ratios. Of course there will be disagreement among moderate deontologists about what the correct ratio might be, but I have already noted that theorists like Moore and Nagel are confident that constraints' thresholds must be set very high, which indicates a quite different ratio than 70:30 or 80:20. For example, Nagel suggests that murdering one innocent person is impermissible unless it is the only way to prevent a very large evil, such as the deaths of *at least* fifty innocent people ('at least' because he considers this the threshold for the constraint against murder). If we take this suggestion seriously,

⁷ Thomas Nagel, 'War and Massacre', *Mortal Questions*, (Cambridge, 2012), pp. 53–74, at 62, emphasis his. Notice that he characterizes the threshold as the decisive point at which a deontological constraint can be permissibly violated, which differs from my characterization of it as the point beyond which a constraint can be permissibly violated; this difference has no bearing on my argument. Also, I do not mean to suggest that Nagel is clearly a moderate deontologist, although the view does seem to be implicit in much of his discussion. For example, he writes, '[I]t seems to me certainly right to adhere to absolutist restrictions unless the utilitarian considerations favoring violation are overpoweringly weighty and extremely certain' (Nagel, 'War and Massacre', p. 56.).

then we get something like a 50:1 or 100:2 ratio of weightiness of deontological to consequentialist considerations.⁸

Is a 50:1 or 100:2 ratio enough to resist the charge of pluralism? I think that it must be, and there are further details to be discussed about deontological constraints, besides their extreme weightiness in comparison to consequentialist considerations, and some remarks to be made about philosophers' standard applications of 'pluralism' to certain theories that give us even more reason to think that 'pluralism' just gets moderate deontology wrong. What about others who may consider themselves moderate deontologists yet endorse a ratio that is closer to 70:30 or 80:20? Those theorists may have a more difficult time defending their views as deontological ones, especially since, as I have claimed, the setting of high thresholds is a necessary condition for a theory to count as deontological, but I have not the space here to further examine the issue.⁹

Michael Moore's (2010) analogy, which likens moderate deontology to a dam, provides a useful way of illustrating the primacy of deontological constraints in the theory (although this is not his aim with the analogy).¹⁰ Moore asks us to imagine water rising behind a dam that eventually reaches the threshold of the dam's height and spills over. Like a dam's threshold, the point beyond which water spills over, a threshold in moderate deontology serves as a marker for determining when a constraint can be permissibly violated because of a spillover of negative consequences. However, unlike a dam's threshold, the location of which largely depends on facts about the water it is built to confine, the location of a deontological constraint's threshold does not depend on some already known set of facts about impending consequences. Determining a constraint's threshold must begin with attention to the constraint itself rather than some set of consequences, but let me say more about the location of a threshold first.

It would seem that thresholds would have to either be consistently the same no matter the constraint in question, or the location of a threshold would have to depend on the nature of the constraint in question.¹¹ For example, would the threshold for permissible lying be different or the same as the threshold for permissible murder? Could I permissibly lie to save the lives of a few innocent persons, but not permissibly commit murder to do so? I take it that most moderate deontologists (and commonsense morality) will affirm that the threshold differs in

⁸ Applying this ratio to other kinds of deontological constraints and consequentialist considerations, I presume, would get very complicated, and so I leave it to the reader to consider how that might go.

⁹ Suppose that one endorses a theory that posits only one deontological constraint and sets an extremely low threshold on that constraint such that trivially bad consequences could override it, and further suppose that the theory is consequentialist in all other respects. According to some theorists, even though such a theory has only one constraint and that constraint's weightiness in comparison to consequentialist considerations is very low, it is still a kind of deontology because of the existence of at least one deontological constraint. Both Smilansky and I object to this sort of philosophical thinking. Really such a theory would be more accurately characterized as consequentialist!

¹⁰ Moore, *Placing Blame*, p. 723. He attributes the analogy to Joseph Raz.

¹¹ Alexander and Moore call these two versions of moderate deontology the 'simple version' and 'sliding scale threshold deontology' respectively (Alexander and Moore, 'Deontological Ethics').

relation to the constraint in question.¹² Thus, the threshold for permissible murder is probably much higher than the threshold for permissible lying. That is to say, locations of thresholds vary with constraints, and this is certainly another way in which the primacy of deontological constraints is manifest since while it is true that the moderate deontologist is concerned with what sort of consequences it would take to override a constraint, that question can only be answered by first examining the constraint in question, and once the theorist makes some determination about the degree of stringency of a constraint, only then can she ask questions about when the constraint can be permissibly violated.¹³

It might be objected that it goes the other way too for the moderate deontologist. Only by examining the consequences in question will she be able to determine whether or not a constraint should be violated, and so consequences are just as fundamental to her evaluations of actions as deontological constraints are. In response, consequences are absolutely relevant to the theorist's evaluations, but they are not fundamental in the way that constraints are. To see this, one must observe the difference between the treatment of constraints and the treatment of consequences. Constraints are the theory's first concern, as they are what the theorist focuses on when it comes to setting thresholds by evaluating the stringency of each constraint and thereby limiting what we can permissibly do for the sake of consequences. In contrast, consequences are only of concern to the theorist whenever they are severe, and the locations of deontological constraints' thresholds must reflect that fact. The normative function of consequences in moderate deontology is that of overriding constraints, and so they would only appropriately enter into the theorist's evaluations of actions whenever that function is either realized or comes close to being realized, which, as I have noted, is rare due to the locations of thresholds being set quite high.

A final way in which the primacy of deontological constraints in moderate deontology is evident has to do with our everyday moral lives. Throughout the course of an agent's life, she must make decisions about which actions to perform and which to abstain from performing. Since moderate deontology tells us that there

¹² For instance, Samantha Brennan writes, 'I think the amount that must be at stake to justify killing a person is different than the amount that must be at stake to justify punching them in the nose. A great deal less must be at stake when the right in question is the right not to have one's nose punched. This is the intuition that the more serious the right, the more that must be at stake before its infringement can be justified' (Samantha Brennan, 'Thresholds for Rights', *The Southern Journal of Philosophy* 33.2 (1995), pp. 143–168, at 148.).

¹³ A question could be raised concerning how the theorist goes about determining the stringency of a constraint, and she might even be accused of making this kind of determination on the basis of consequentialist considerations. That is to say, she might be accused of determining the stringency of a constraint strictly in terms of severity of consequences that could override it, and if this allegation were true, it would certainly undermine my claims about the primacy of deontological constraints in moderate deontology. But, the allegation is false. As a deontologist, the theorist must treat the stringency of a constraint as being intrinsic to it, and not dependent on any consequentialist considerations, although it is true that the theorist is forced to make some determination (or, perhaps, estimation) regarding at what point severity of consequences would override the stringency of a given constraint. Anthony Ellis discusses the apparent incommensurability of deontological constraints and consequentialist considerations in great detail (Ellis, 'Deontology, Incommensurability and the Arbitrary', especially pp. 862–870.).

are constraints against performing certain types of actions unless sufficiently bad consequences are at stake, it is plausible that the agent who subscribes to moderate deontology is guided through her everyday moral life by a constant, though not always conscious, awareness of such constraints and that it is this awareness that generally allows her to know which actions are and are not permissible. Of course this is not to suggest that in every situation she will consciously deliberate about whether or not she should perform some action, and then she will generally arrive at a conclusion about what she ought to do on the basis of deontological considerations. This would be an extremely implausible picture of her moral decision-making, given what most people's moral experiences are actually like. Rather, in light of the foregoing discussion about locations of thresholds, the moderate deontologist's moral experience is probably such that her moral judgments about what she ought to do in most cases are automatically deontological and that she would only engage in deeper deliberation about what she ought to do in cases where a threshold is either exceeded or comes close to being exceeded because these are the cases in which deontological and consequentialist considerations conflict in a significant way.

Now one might object that she must have an awareness of consequences too since they are also relevant to the normative status of actions, and this is true, but the difference between the two kinds of considerations with respect to the agent's moral experience cannot be ignored. It cannot be reasonably asserted that an awareness of consequences is what *guides* the agent through her moral life, although such an awareness may guide her prudentially speaking or in certain cases in which there is no deontological constraint in play.¹⁴ From time to time, she may be confronted with critical situations in which she is forced to deliberate about whether or not she ought to violate a constraint to prevent some set of consequences, but these situations will only occur whenever the consequences are very bad and would require the breaking of a deontological constraint in order to be prevented. Any situation in which the consequences are not severe and a constraint is in play will likely be one in which the agent respects the constraint without paying any attention to the consequences of the performance of the action. This is not to say that the potential consequences of her actions will never be noted by her beforehand, even when they are nowhere close to meeting a threshold, only that they will not be concentrated on as part of her decision to respect a constraint. Therefore, we can see that deontological constraints play another central role in the theory insofar as they guide, much of the time automatically, the moderate deontologist through her everyday moral life.

¹⁴ Regarding supererogatory actions, the agent may face situations in which there is no deontological constraint in play, and although she is not obligated to promote the good, she may still deliberate about whether or not she will do so. These are atypical situations for the agent, though, since she will not always be deliberating about promoting the good whenever doing so would not involve violating a constraint. An agent may be characteristically benevolent such that she performs supererogatory actions on a regular basis, but characteristic benevolence would not require constant deliberation. She would perform those actions by her very nature, and if she were a moderate deontologist, then she would be guided by an awareness of constraints such that she would not be violating constraints for reasons of benevolence.

4 Deontology Beyond Thresholds

So far I have argued that the primacy of deontological constraints in moderate deontology is manifest in a number of different ways, and I have shown that the theory cannot reasonably be considered half-and-half, as suggested by Smilansky. Now I will discuss the nature of constraints violations that occur beyond deontological constraints' thresholds, and in doing so it will be seen that moderate deontology remains deontological in an important sense even when it goes for consequentialist considerations. Here is another quotation from Smilansky:

We should reject the possibility of 'moderate' or 'sensible' deontologists of the sort Kagan, Nussbaum and many others describe: such people need to be re-described as pluralists who, when consequentialist and deontological concerns conflict, are ready to make room for consequences-indifferent concern for deontological constraints (e.g. before the threshold) as well as for deontological-constraints-defeating concern with consequences (e.g. beyond the threshold). Because they are sensible, such pluralists suspend their partial deontological commitments in specific cases.¹⁵

There are two points that I wish to make here. The first concerns Smilansky's assertion that when consequentialist and deontological considerations conflict, the theorist is ready to make room for both 'consequences-indifferent concern' for constraints and 'deontological-constraints-defeating concern' for consequences.

With regard to consequences-indifferent concern for constraints, I think that Moore's dam analogy is particularly apt for explaining this. The water counts, but there is no damage done unless the water spills over the dam's threshold. Analogously consequences count, but there is no moral wrongness in abstaining from violating a deontological constraint for the sake of consequences unless the consequences are so severe that they exceed the constraint's threshold. So, while it is true that consequences always count inasmuch as they always count toward a threshold, the moderate deontologist need not be concerned (normatively speaking) with consequences at any point before a threshold is surpassed. However, with respect to deontological-constraints-defeating concern for consequences, the moderate deontologist could plausibly maintain both that it would be wrong to violate a constraint at any point before the constraint's threshold is surpassed and that there is some degree of moral wrongness even when a constraint is violated beyond its threshold, although the violation is itself permissible. In this way, moderate deontology can be said to remain deontological beyond its constraints' thresholds due to its emphasis on the wrongness of violating constraints even when an agent permissibly does so. The difference here, then, between the moderate deontologist's concern for constraints and her concern for consequences is that the former is always a normative concern for her insofar as constraints violations are always to some extent wrong, whereas the latter is a concern for her only whenever

¹⁵ Smilansky, 'Can Deontologists Be Moderate?', p. 74. Smilansky is referring to Nussbaum's mention of 'sensible' deontologists in her 'Comment' in Judith Jarvis Thomson's *Goodness and Advice* (Princeton, 2009).

a threshold is surpassed. Now this is not to suggest that moral dilemmas arise whenever consequences are so severe that they exceed a threshold and require the breaking of a constraint to be prevented. The claim is not that an agent will fail morally no matter what she does in these situations; there is an all things considered right action for her to perform, namely, preventing severe consequences from occurring. However, since doing so requires a constraint violation, the moderate deontologist could assert that there is some intrinsic wrongness in violating a constraint even when doing so is instrumentally good and is the all things considered right action to perform because the instrumental goodness simply outweighs the intrinsic wrongness.¹⁶

There is no inconsistency in the suggestion that an agent may perform the all things considered right action by violating a constraint in order to prevent the occurrence of severe consequences and that by doing so the agent is wronging someone insofar as she is violating some constraint. For example, the all things considered right action in the terrorist scenario may be to punish an innocent person to prevent the destruction of a major city, but to the extent that an innocent person is punished and a deontological constraint is thereby violated, the moderate deontologist could assert that there is some degree of wrongdoing that consists in someone being used as a means to a greater good.¹⁷ Thus, the theorist could reasonably conclude that any violation of a constraint amounts to some intrinsic wrongdoing being performed even when performing the violation is the all things considered right action in light of the severity of some set of consequences.

At this point one might object that there is some degree of moral wrongness whenever a deontological constraint competes with consequentialist considerations for the all things considered right action, but the constraint's threshold is not surpassed and accordingly bad consequences are allowed to occur by an agent in lieu of her violating a constraint to prevent them. This objection is especially problematic, one might claim, when we consider that there will be situations in which consequences are almost severe enough to override a constraint, but not quite sufficient. If violating a constraint is in some respect wrong both before and beyond its threshold, then why not think that allowing the occurrence of bad consequences is in some respect wrong both before and beyond a threshold?

The moderate deontologist could respond to this objection by pointing out that her theory is a deontological one, and so it mainly (at least, before a threshold is exceeded) evaluates actions only on the basis of deontological, not consequentialist, considerations (e.g. considerations about respecting/not violating constraints). So, this explains why it is not wrong in any regard whatsoever to respect deontological

¹⁶ Accordingly, it seems that it would not be inappropriate for an agent to feel some tinge of regret whenever she permissibly violates a constraint or for her to make reparations for it after the fact.

¹⁷ Recall that Smilansky accurately characterizes punishing the innocent as a 'paradigm of injustice', although he reaches the wrong conclusion when he says that a 'deontologist, *qua* deontologist, must oppose such a plan' since the absolutist must always oppose it, but the moderate deontologist must only conditionally oppose it. However, the moderate deontologist (*qua* deontologist!) will agree that punishing the innocent is a paradigm of injustice, and so she could still believe that punishing the innocent is intrinsically wrong even when the constraint against punishing the innocent is overridden by consequentialist considerations.

constraints before their thresholds are exceeded. Furthermore, the entire purpose of positing thresholds is to indicate at what point consequentialist considerations begin to have normative significance whenever they conflict with deontological ones. It was noted above that consequences always count toward thresholds, but it would only be wrong for an agent to allow the occurrence of severe consequences if those consequences were to exceed a constraint's threshold. The reason it can be plausibly asserted by the moderate deontologist that a constraint violation is always to some extent wrong but allowing bad consequences to occur is only wrong beyond a threshold is that the theory is deontological at its core, and accordingly it treats all constraints violations as intrinsically wrong whether or not they are the all things considered right actions, whereas consequences only have normative significance in the theory beyond thresholds.¹⁸ In other words, constraints violations are always intrinsically wrong, although sometimes the intrinsic wrongness may be outweighed by instrumental goodness, but allowing bad consequences to occur is only wrong whenever the consequences have normative significance.¹⁹

The second point to be made concerns Smilansky's claim that the moderate deontologist suspends her 'partial deontological commitments' in certain situations (viz. any situation in which a threshold is surpassed). Smilansky is not the first to make this kind of assertion. Larry Alexander writes, 'The threshold deontologist [(i.e. moderate deontologist)] would have us believe that we switch from not being resources for others to being resources for others when N [(i.e. a threshold)] is reached.'²⁰ In light of the foregoing, though, it should be obvious that neither of these claims should bother the moderate deontologist because they are, at best, dubious. The theorist need not suspend her deontological commitments since she can plausibly maintain that violating a deontological constraint is always intrinsically wrong, even when the wrongness is counterbalanced by consequentialist considerations, and she can also retain the deontological presumption that persons are not resources for others while admitting that beyond a threshold a person might permissibly be used as a means to an end because she can assert that there is some intrinsic wrongness to using the person despite its being an all things considered right action, given the circumstances.

¹⁸ In addition to constraints' thresholds, consequences may also have normative significance beyond options' thresholds.

¹⁹ It may be the case that sometimes the occurrence of consequences is wrong before a threshold, but only because of the action(s) that constitute(s) the consequences and not because an agent allows them to occur. Suppose, for instance, that an honest criminal tells you that the only way you can prevent him from committing the murders of two innocent people is to commit one murder yourself. It would be right on moderate deontological reasoning for you to abstain from committing one murder in order to prevent him from committing two others, and there would be no wrongness in you thereby allowing the other murders to occur, but there would be wrongdoing on the part of the criminal who commits the two murders. So, this is an instance of wrongness in the occurrence of consequences before a threshold, but the wrongness does not consist in the consequences being allowed to occur by an agent. Rather, it consists in the actions that constitute the consequences, which interestingly in this case are violations of a deontological constraint against murder.

²⁰ Alexander, 'Deontology at the Threshold', p. 912.

5 Why Terminology Matters

By clarifying both the primacy of deontological constraints in moderate deontology and the normative implications of permissible constraints violations I have sought to show that moderate deontology is fundamentally deontological. It is a deontology that makes some room for consequentialist considerations in its normative framework, but to the extent that whenever they conflict with deontological considerations, consequences must be sufficiently bad to override a constraint and thereby render its violation permissible. Whether or not moderate deontologists will agree with every aspect of my discussion, I think that they should agree with most of it, especially my emphasis on the deontological component of the theory and how the theory can be seen to be importantly deontological in various ways. If the moderate deontologist reasons otherwise and does not underscore the deontology of her theory, then she might just fall prey to the charge of disguising a kind of pluralism in deontology's clothing, which brings the discussion of this essay to its final question: why does terminology matter?

Why does it matter whether the theory is called 'moderate deontology' or 'pluralism' (of some kind)? Smilansky contends that 'terminology is significant here since the theoretical misinterpretation masks the degree to which common-sense morality is radically pluralist.'²¹ He then goes on to point out that people generally make room for both kinds of considerations in their moral decision-making, and so we should retain our understanding of deontology as absolute in order for us to recognize this plurality.

I agree with Smilansky that the terminology is significant and that people do normally make room for both deontological and consequentialist considerations, but our agreement ends there. Concerning terminology, I reach the opposite conclusion. I maintain that if moderate deontology were re-described as a kind of pluralism, then this would mask the degree to which commonsense morality is radically deontological and opposed to consequentialist justifications of deontological wrongdoing. Of course this is to assume that moderate deontology represents the morality of common sense, which I am ready to accept, but even if there is disagreement on this point it must still be admitted that calling moderate deontology 'pluralism' would be inappropriate, given the extent to which the theory is deontological. 'Moderate deontology' is a perfectly suitable name for a deontological theory that is moderate in its treatment of the violability of deontological constraints.²² In the same way, 'absolutist deontology' is an accurate name for a deontological theory that is absolutist in its treatment of constraints. And 'deontology' is just a name for a theory or family of theories that has primarily deontological elements (e.g. constraints, duties, rights). There is no need to revise our terminology since 'moderate deontology' captures both the fact that the theory is, at its core, a deontological theory and that the theory is moderate or non-absolutist.

²¹ Smilansky, 'Can Deontologists Be Moderate?', p. 75.

²² Because the theory is sometimes called 'threshold deontology', it could also be submitted that such a name is appropriate since it is a deontology that sets thresholds on its constraints.

In general, accurate terminology is critical to our normative theorizing because labeling theories in certain ways distinguishes them as having certain qualities and belonging to certain classes of normative theories. So, there might be a further question about whether moderate deontology properly belongs to the set of deontological theories (although it obviously does on my definition of ‘deontology’). Why should a theory that allows consequentialist considerations to sometimes affect the normative status of actions be considered a deontology? I believe that I have adequately answered this question already in the previous two sections, and I have nothing more to add on the matter. However, a more troubling question might be put: why should a theory that posits more than one kind of normative consideration not be considered pluralist?

The term ‘pluralism’ in philosophy is normally used to signify the existence or validity of more than one x , where x can be substituted with whatever the pluralist theory concerns. For example, value pluralism says that there exists more than one kind of value. It is this sort of routine philosophical thinking that seems to lend credence to the argument against moderate deontology being considered a deontological theory and for its being re-described as a kind of pluralism. One might argue that even if the position is not half-and-half with regard to action guidance or the weight of what matters, it is still half-and-half inasmuch as it treats two types of considerations as ones that can affect the normative status of actions. Thus, because it treats more than one type of consideration as having an impact on the normative status of actions, the theory is pluralist, not deontological.

First, while it is true that moderate deontology does make room for both deontological and consequentialist concerns, as I have done throughout the course of this discussion, I will only emphasize that the deontological component is primary and that close inspection of the theory reveals that this is so in a number of different ways. To the philosopher that clings to a strict definition of ‘pluralism’, such that any theory that posits more than one kind of thing is itself a type of pluralism, my only response is that such a definition is broadly applicable to many philosophical (and not just ethical) theories. Therefore, it might be better applied to theories that stress the primacy and/or fundamentality of more than one thing, but this is merely a suggestion.

Secondly, from the perspective of the moderate deontologist who is committed to the notion that morality is, at bottom, deontological, it is difficult to imagine that the theorist would find such a re-describing of her theory attractive. Certainly her finding the re-description unattractive would not itself be evidence that the theory should not be re-described as pluralist, but given that the deontological features of her theory are so central and manifest both before and beyond constraints’ thresholds (unlike consequentialist considerations), it can safely be concluded that her theory really is and should be interpreted as a deontological theory.

Finally, as previously noted, I am sympathetic to the idea that both deontological and consequentialist considerations are ones that people do take into account in their commonsense ethical thinking. In light of this, there does appear to be a need to explicitly address this plurality in our normative theorizing, and one might argue like Smilansky does and claim that ‘moderate deontology’ is a misleading way of

representing commonsense morality, which both masks its pluralist reality and ignores the challenge of pluralism facing normative ethics.

In response, the challenge of pluralism is one that must be answered by considering various normative concerns and trying to develop a plausible theory that best accommodates those concerns. One could go about answering this challenge in different ways. For example, one might develop a consequentialist theory (e.g. a rule-consequentialism) and thereby attempt to accommodate constraints as rules that prohibit certain actions but are chosen on the basis of consequentialist considerations, or one could develop a moderate deontological theory and thereby attempt to accommodate consequentialist considerations as ones that are secondary to deontological concerns but can nevertheless build up to severe degrees and override deontological matters. Thus, moderate deontology does not ignore the challenge of pluralism. Rather, it convincingly addresses it in such a way that it both retains the centrality of its deontological component and simultaneously allows for the relevance of other non-deontological considerations. Also, ‘moderate deontology’ signifies the notion that morality is primarily deontological but not absolutely so. Accordingly, it is not misleading because it indicates the theory’s commitments and arguably the fundamental commitments of commonsense moral thinking.

Perhaps Smilansky might desire something else, though, from ethical theorists. Perhaps what we should be doing is trying to develop a pluralist theory that accommodates deontological matters, consequentialist considerations, virtue ethical ones, and so on, but does not disguise itself, so to speak, as any one species of normative theory. One could certainly go in for such a theory if one were attracted to this idea of pluralism and the centrality of various normative concerns, but for theorists who are committed to a different notion of morality, that morality has a distinct structure of some sort or another and that some kinds of considerations are more prevalent or critical than others, it seems reasonable that those theorists should endeavor to construct theories that accommodate whatever normative concerns they deem necessary within the frameworks of their preferred ethical theories.²³

²³ For helpful comments on earlier drafts of this paper, I thank Douglas Portmore, Cheshire Calhoun, and Dale Miller.