Hooker and Arneson on sophisticated rule consequentialism

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1. Introduction:

In the field of moral philosophy there are many different theories that strive to provide us with an answer to the question that is so central to said field, i.e: in any given situation, what is the right course of action? Philosophers do of course provide a great many answers to this question. Some argue that the determinant of what morality demands as something that is dependent on the way in which a result is brought about. Other theories see the right thing to do as whatever brings about a certain type of result. One of the more well-known schools of thought that might be seen as belonging to the latter view is the types of theories known as consequentialist theories. These theories usually pick out the moral thing to do as that which brings about the best consequences which in turn are usually measured in some form of well-being or utility. What action we perform to bring about these consequences is usually irrelevant. An example would be act consequentialism which demands that we always perform the action that would produce the consequences that would maximize the good in any given situation. Juxtaposed to this theory we have what is commonly referred to as rule consequentialism. This particular type of consequentialism holds that the moral thing to do in any and all situations is to act in accordance with an ideal code of rules that, were they followed would lead to the best consequences. It is this particular brand of consequentialism that will be the subject of this essay.

Rule consequentialism is sometimes seen as a more attractive alternative to regular act consequentialism. Of particular notice is rule consequentialism’s ability to seemingly solve some of the practical problems that burden act consequentialism such as it being too demanding or too hard to adequately adhere to. Rule consequentialism does however have a great many problems. Common criticisms of rule consequentialism are that it, when put into practice, leads us to follow rules that lead to sub-optimal results and that it demands that we follow and make sacrifices in accordance with codes even when no one else is following it. Due to these and many other criticisms, rule consequentialism fell out of favour as the arguments against it were seen as decisive (Arneson 2005, p 235).

In his book, *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality* (2002), Brad Hooker attempts to develop a version of rule consequentialism that is able to withstand the typical problems that have plagued the view. This modified version of rule consequentialism is in turn critiqued by Richard Arneson in his text “Sophisticated Rule Consequentialism: Some Simple Objections” (2005). Arneson’s criticisms are then in turn evaluated by Hooker in a text titled “Reply to Arneson and McIntyre” (2005). In this essay I will attempt to evaluate to what extent Hooker is successful in defending his conception of rule consequentialism. I will be arguing that Hooker fails to dispel the doubts raised by two out of three of Arneson’s criticisms thus landing his theory in deep trouble, at least in regards to the problems brought up in this essay. The essay will be divided into six sections the first of which being this introduction. I will begin by briefly describing Hooker’s theory. This will be followed by a discussion on three of Arneson’s criticisms that all revolve around the so called
rule worship and utopianism criticisms. I will then conclude with a summary of the previous sections.

2. Sophisticated rule consequentialism:

I will refer to Hooker's particular view as sophisticated rule consequentialism. This is a borrowed term from Arneson who uses it in order to distinguish Hooker’s theory from regular rule consequentialism.

Hooker’s conception of rule consequentialism demands that we adhere to the moral code whose internalization by the overwhelming majority of people would lead to the best overall consequences. Best consequences is here taken to be equivalent to what maximizes well-being (Hooker 2002, p 32). Importantly, when Hooker talks about internalization he is not simply referring to the act of complying with the ideal code. Rather, internalization according to Hooker is the act of accepting the ideal code, something which entails compliance as well as the formation of dispositions towards encouraging adherence to the ideal code in others, resenting those who do not comply with the code, experiencing guilt when they themselves break the code etc. These dispositions strengthen the code’s place in society in a way that simple compliance would not (Hooker 2002, p 75-76). According to this theory, an action such as murder is wrong since the ideal code that would produce the best consequences has a rule that forbids it. Hooker justifies this conception of morality by pointing to a list of criteria by which he evaluates moral theories. According to Hooker, a moral theory must (1) arise from attractive general beliefs about morality, (2) be internally consistent, (3) cohere with the moral considerations we would endorse after careful consideration, (4) provide a unifying fundamental principle that explains why our moral considerations are correct and also justifies these from an impartial point of view, (5) aid us in dealing with moral questions when we are uncertain or disagree on the moral thing to do (Hooker 2002, p 4).

In Hooker’s mind, the type of theory that best adheres to these criteria is his version of rule consequentialism. Of particular importance is how Hooker’s sophisticated rule consequentialism supposedly fulfills both criteria (3) and (4). Criterion (3) i.e. coherence with our moral considerations, seems to be roughly equivalent to endorsing the judgements of common-sense morality. Yet there are other theories that cohere with common-sense morality besides rule consequentialism. It is the fulfillment of criterion (4), i.e. picking out a single unifying principle that explains and justifies our moral considerations, that supposedly allows Hooker’s theory to rise above the competition. Some type of pluralist theory that conceives of morality as a plethora of different duties and prohibitions may cohere with our considered moral convictions and thus fulfill criterion (3), yet it cannot provide us with any single principle that justifies these moral rules. Sophisticated rule consequentialism is seemingly able to both cohere with our moral considerations and provide a single fundamental principle that justifies said considerations. We should not break promises or lie and the overlapping justification for these prohibitions is that rules forbidding such actions would, on the whole, lead to the best consequences if they were internalized by most people. Other theories, such as act consequentialism, might provide a single unifying
principle, yet said principle may justify moral considerations that we do not endorse after careful reflection (Hooker 2002, p 9-16 & 19-23). Through these two principles Hooker is able to achieve reflective equilibrium (Hooker 2005, p 265). Something that will be of importance later is that Hooker’s theory has multiple levels that tie in to each other in somewhat esoteric ways. On the fundamental level Hooker endorses a principle that selects rules based on their consequences. This principle in turn, generates rules that fall in line with the rules of common-sense morality. These two levels of principles are then justified by the criteria that Hooker uses to evaluate moral theories, most importantly criteria (3) and (4). This while not a level in the same sense as the other two still plays a critical role as these criteria are what support and justify the theory as a whole. Hooker never spells out exactly how the different levels build upon each other so this is my own reconstruction of Hooker’s theory, based on looking at the different aspects of the theory as whole.

Now that we better understand Hooker’s theory we will move on to discuss some of Arneson’s criticisms of sophisticated rule consequentialism. As previously stated, these arise from the rule worship and utopianism problems. These problems are common criticisms against regular rule consequentialism. To see how these problems arise, let us consider a world where the people in a society have adopted the ideal code of rules whose internalization by the overwhelming majority of the population would lead to the best consequences. This code would need to take into account the biases and other limits to the cognitive capabilities of regular humans. A code with recommendations that change to suit the specific circumstances for every possible scenario may be perfect in that it always guides us to the result that would maximize the good, yet teaching this code to normal people would likely prove impossible. It thus seems reasonable to assume that any code that is simple enough for human internalization will sometimes fail to recommend the action that generates the best consequences. It might even be so that holding true to the ideal code brings about negative or even catastrophic consequences. Consider a situation where the ideal code demands that we keep our promises to others as this is the rule that on the whole would produce the best consequences. However, in this particular situation keeping our promise will lead to a nuclear war and the death of millions of innocents. Keeping this promise even when the consequences are so decidedly negative is an example of rule worship. Consider yet another situation where the ideal code demands that we perform an action that, were it accepted by the overwhelming majority of the population, would lead to the best consequences. However, in this particular situation keeping our promise will lead to a nuclear war and the death of millions of innocents. Keeping this promise even when the consequences are so decidedly negative is an example of rule worship. Consider yet another situation where the ideal code demands that we perform an action that, were it accepted by the overwhelming majority of the population, would lead to the best consequences. However, in this particular situation keeping our promise will lead to a nuclear war and the death of millions of innocents. Keeping this promise even when the consequences are so decidedly negative is an example of rule worship. Consider yet another situation where the ideal code demands that we perform an action that, were it accepted by the overwhelming majority of the population, would lead to the best consequences. However, in this particular situation keeping our promise will lead to a nuclear war and the death of millions of innocents. Keeping this promise even when the consequences are so decidedly negative is an example of rule worship.

3.1 Hybrid problem:
As we discussed above, one of the main factors that generate problems for any conception of rule consequentialism is the fact that any code that is supposed to be internalized by actual humans needs to take into account the limited cognitive abilities that limit our capability to comprehend and thus follow overly complex sets of rules. Thus, the ideal code of rules will be a relatively simple one not burdened by clauses for every scenario. This will however lead to the inevitability of the code asking us to act in sub-optimal ways. By sub-optimal ways I am here referring to when rules force us to act so that the outcome produces less good than some alternative. Hooker considers this not a flaw of rule consequentialism but rather as something that counts in its favor. Hooker is clear that rule consequentialism must take into account our intuitions about there being prohibitions on certain types of actions even when performing said actions would maximize the good. Such actions would for example be things like murdering, harming, stealing, lying and breaking promises made to other people. We are thus not allowed to, for example, lie to another person even when doing so would produce somewhat better consequences than any other alternative. Importantly, Hooker does not argue that we should stick to the ideal code no matter what. As we will see in the next section, exceptions are made in situations where adhering to the code would lead to disastrous consequences (Hooker 2002, p 126-127). This would make the practical outcomes of Hooker’s version of rule consequentialism more in line with some form of deontological view of morality rather than the common form of consequentialism, i.e. act consequentialism which claims that the right thing to is always that which maximizes the good no matter what actions one takes to achieve it. Perhaps more importantly, it gives Hooker’s view a way to align its verdicts with that of common-sense morality. As we might recall from the introduction, one of the criteria that Hooker establishes for the right moral principle is that it adheres to our preexisting moral intuitions which in turn is a requirement for achieving reflective equilibrium. These intuitions being the same as the moral demands and recommendations of common-sense morality.

Arneson questions Hooker’s line of reasoning. He argues that the incorporation of deontological concerns into Hooker’s theory makes it something that is decidedly non-consequentialist. If the fact that Hooker’s theory lines up with common-sense morality and its prohibitions on certain actions is something that counts in favour of said theory, this would imply that these prohibitions matter morally in-and-of-themselves. This would in turn mean that the way in which different outcomes are brought about would have intrinsic moral significance which would, according to Arneson, make it so that no version of consequentialism is true. According to Arneson, to have our fundamental principle be one which demands that we strive for the best consequences while having another principle on some other level that demands that we adhere to common-sense moral judgements makes rule consequentialism an unstable hybrid. In his mind, we either accept common-sense moral judgements in which case these should be incorporated into the foundational principle of our view or else abandon these judgements. When these principles are rejected Hooker becomes unable to see the aligned recommendations of common-sense morality and sophisticated rule consequentialism as something that speaks in favour of his own theory, rather, this would be nothing but a coincidence lacking any moral weight. Importantly, Arneson does not claim that there is no such thing as a theory with multiple
levels of principles. However, the principles on different levels must at the very least cohere according to Arneson. In his mind, for different levels to cohere their judgements cannot be undone or disappear at a different level as they supposedly do in Hooker’s theory. According to Arneson, sophisticated rule consequentialism builds a system in which rules are assessed by their consequences on one level and by the degree to which they line up with the judgements of common-sense morality on another level. According to Arneson, this makes Hooker’s view incoherent (Arneson 2005, p 243-245).

Hooker takes issue with Arneson’s claim that a moral theory needs to incorporate all its morally significant considerations into its foundational principle or else abandon these considerations. He admits that it is true that both act consequentialism and something like Rossian deontology deal with these considerations in such a way. However, in his mind, this does not mean that all theories must do the same. According to Hooker, it would in fact be quite strange for all moral theories to be restricted in such a way. Firstly, it would make it impossible for any theory to achieve reflective equilibrium. As we might recall, reflective equilibrium is achieved when a theory coheres with our considered moral convictions as well as provides a unifying principle that justifies said principles. If we are forced to pick either a consequentialist or a deontologist principle this equilibrium seems unattainable. Secondly, if any theory that attempts to accommodate common-sense morality without incorporating it into the theory’s foundational principle is rendered incoherent, this would mean that a great many different moral theories would suddenly be unavailable. According to Hooker, Kantian ethics, contractualism and virtue ethics are all moral theories that attempt to accommodate the judgements of common-sense morality without giving these judgements a place in their respective foundational principles. Thus, if we accept Arneson’s claim that no such compromise between a non-deontological foundational principle and a higher level adherence to common-sense moral judgements is impossible, we are forced to reject not only sophisticated rule consequentialisms plausibility but the plausibility of a great number of moral theories (Hooker 2005, p 264-266).

At first glance, Arneson’s criticism of Hooker seems to make some sense intuitively. There does seem to be something strange about having a foundational principle that demands that we strive for the best possible consequences and a higher-level principle that think that we should adhere to common-sense moral rules. Yet, on further inspection this criticism doesn’t really seem to be applicable to Hooker. Arneson’s critique is that the principles on Hooker’s different levels are not coherent or that there is some sort of conflict between them, yet this does not seem to be true. If Hooker had espoused some form of act consequentialism as his fundamental principle this might have been the case i.e. a principle that demands that we in all situations strive to produce the best consequences. However, Hooker’s principle does not demand that we always do what produces consequences that on their own maximize the good but instead demand that we act in accordance with the code of rules whose internalization would, on the whole, produce the best consequences. The key phrase here is “on the whole”. Thus, I don’t see in what way Hooker’s principles are incoherent. They do not conflict, neither are they completely separate. As I interpret Hooker’s view it can be divided into three groups of principles. First, we have the list of criteria we discussed
previously. This is not a level in the same sense that the other groups of principles are but these still play an important role as it is in accordance with these that Hooker picks out his fundamental principle as well as what justifies the principles that are generated by said fundamental principle. Secondly, we have the fundamental principle i.e. rule consequentialism. Lastly, we have the actual rules that are generated by the fundamental principle. It is this last group of principles that Arneson takes issue with. Namely the fact that these demand that we act in accordance with common-sense morality. However, this does not seem so strange when we take all three group of principles into account. The adherence to common-sense morality is justified at the fundamental level by pointing to the fact that this is what on the whole creates the best consequences and more importantly it is justified by the criterion for moral theories that our theory coheres with our moral convictions i.e. common-sense morality. In regards to what Arneson says about considerations of one level not being supposed to vanish at another level it might be true that the two levels of principles we have been discussing are quite different even though they are structurally linked. However, is this truly something that renders Hooker’s theory incoherent? It seems quite clear that the different levels are not just slapped together randomly but rather made so as to build upon each other. There also does not seem to be any purely logical reason why these two principles cannot be combined in such a fashion. At the end of the day, this might come down to a difference in how the two authors define a coherent theory. However, if we are too judge these different conceptions of what structural rules a theory must adhere to, it seems that Hooker’s is somewhat more reasonable. Thus, I must conclude that Arneson’s critique fails on this front.

3.2 Disaster avoidance:

As we discussed above, any code that we may reasonably use will sometimes demand that we act in ways that do not produce the best possible consequences. In many of these cases this is not a problem for Hooker as he sees this as in line with what common-sense morality would have us do. However, in some situations the consequences would not just be somewhat worse than some other alternative but decidedly negative or even catastrophic. This issue lies at the heart of the rule worship and utopianism problems. One way in which Hooker attempts to avoid such outcomes is through the introduction of a disaster-avoidance rule. This is a rule that demands that we act so as to not bring about disastrous consequences. According to Hooker, this consideration is stronger than others meaning that, for example, the rule to keep promises or tell the truth can be outweighed when following these rules would lead to disaster. The strength of the disaster-avoidance rule is explained by Hooker with the claim that it would be reasonable to assume that the inclusion and greater strength of such a rule would lead to better consequences in the long run than a code lacking such a rule (Hooker 2002, p 98-99). With the help of this rule, we are able to avoid the disastrous consequences that the ideal code might otherwise have demanded that we bring about.
Arneson finds this an inadequate solution to the problems of rule worship and utopianism. Firstly, he admits that the disaster avoidance rule might be able to allow us to abandon the ideal code when doing so would avoid disaster. However, he claims that it is likely that in many situations, the ideal code would demand that we act in ways that do not bring disaster, but something very near to it. In these situations, the disaster avoidance rule cannot prevent the ideal code from demanding that we obey rules that lead us to definitively negative results. Arneson claims that it seems strange for someone to claim that it is irrational or unreasonable to demand that we follow an ideal code of rules that brings disaster while not claiming the same for an ideal code of rules that brings about near-disaster (Arneson 2005, p 237-238).

Arneson discusses the possibility for sophisticated rule consequentialism to reply to this criticism by pointing to the fact that acting in ways that follow moral rules but lead to bad consequences is something that speaks in favour of rule consequentialism since this aligns with what common-sense morality would have us do. According to common-sense morality, we have moral obligations to act in certain ways such as the obligations to tell the truth, keep promises etc. Abandoning these moral considerations when doing so would bring about somewhat better consequences is not something that common-sense morality allows. As we have previously discussed, Hooker takes the fact that sophisticated rule consequentialism, like common-sense morality, demand that we hold true to the rules even when this brings about bad consequences as something that speaks in favour of the view. Arneson argues that this reply fails to adequately deal with the problems at hand due to the fact that, in many cases, the moral recommendations of sophisticated rule consequentialism do not coincide with those of common sense morality (Arneson 2005, p 238).

This is a separate issue from the hybrid problem we discussed in the previous section i.e. that the judgements of common-sense morality lining up with those of sophisticated rule consequentialism could not be seen as favourable as this would make the theory incoherent. The criticism that we will now discuss is in regards to the supposed fact that, independently of whether consequentialism and common-sense morality can be combined, the judgements of one do not line up with the other in the cases where the ideal code demand that we bring about near-disaster. To illustrate this, Arneson presents an example of the utopianism problem. In this example, there exists an ideal code of rules that if followed by nearly everyone would bring about the best consequences. This particular code demands that soldiers fighting for a just cause should stand their ground and fight when attacked by an enemy force. This is the rule that supposedly would lead to the best consequences where it followed by most of the population. However, in the current scenario this rule is not in fact adhered to by the majority of your fellow soldiers who have all run away as soon as the enemy appeared. Your choice is now between following the ideal code and standing your ground which would surely lead to your death or escaping to fight another day. These consequences would, according to Arneson, not be bad enough to trigger the disaster avoidance rule yet obviously still be decidedly negative. Both common-sense morality and act consequentialism would allow us to run from the battlefield to fight another day. Sophisticated rule consequentialism on the other hand, even with the disaster avoidance
rule, would demand that we stay true to the code and die standing our ground. We can thus see that the recommendations of common sense morality and sophisticated rule consequentialism do not align meaning that even if we agree with the former, this does not give us reason to accept the latter (Arneson 2005, p 239).

Hooker thinks that the criticism of rule consequentialism regarding near disaster is of great importance. The way in which he attempts to avoid this particular problem is by referring to a special rule that makes it so that no one is required to follow a rule that would require that he make sacrifices for people who themselves do not follow the ideal code. Thus, pretty much all the rules of the ideal code come with this escape clause that allows us to avoid making sacrifices that benefit those who would not do the same for us. So, in Arneson’s example with the fleeing soldiers we might assume that the beneficiaries from you standing your ground would foremost be your fellow soldiers since your last stand is unlikely to have any major impact of the larger course of the war. Thus, the only people who benefit are those soldiers who with their behavior have indicated that they themselves are not willing to follow the ideal code and sacrifice themselves for your sake. You are thus allowed to join them in fleeing to fight another day (Hooker 2005, p 271-272).

Hooker does however admit that the example can be tweaked in order to make it more hard-hitting. Since the rule is dependent on there being beneficiaries who would themselves not make the same sacrifice for you we can simply remove these beneficiaries from the example. If we suppose that your fellow soldiers would not in fact benefit from you standing your ground and dying heroically then the rule about sacrificing for free-riders would not go into effect. Hooker agrees with Arneson that it would be unacceptable to demand that you stand your ground in this particular scenario. He does however disagree with Arneson’s claim that such an outcome, i.e. a person dying with no benefit for anyone, would not count as a disaster (Hooker 2005, p 272). One problem here is that what makes an outcome a “disaster” is not entirely clear. I do however think that Hooker’s conception of a disaster is more reasonable. I think most people would agree that someone dying for no reason and with no benefit to anyone else counts as a disastrous outcome. I thus conclude that Hooker is able to avoid the problems raised by the particular example provided by Arneson. I do however feel that Hooker fails to adequately counter Arneson’s argument regarding near-disaster as a whole. Arneson’s scenario with the soldiers was simply one example of the near-disaster problem meaning that even if Hooker is able to avoid the problems of the example it does not mean that he avoids the problem at large. To see this we might imagine a situation where us following the ideal code would lead to a near-disastrous outcome that is not benefitting any other person. In this situation, sophisticated rule consequentialism would demand that we stick to the rules despite the seeming pointlessness of doing so. Consider a situation where a person is romantically attracted to people of the same sex. Unfortunately for this person, she resides in a country where homosexuality is frowned upon and those who open up about their sexuality commonly suffer discrimination. Now consider a situation where this person is talking with her colleagues at work and is asked a question which if answered truthfully would reveal that she is in fact gay. This revelation would not lead to any disastrous outcome but would lead to some decidedly negative outcomes such
as discrimination. Is it truly reasonable to demand that this person obey the ideal code and tell the truth in this situation? To me this seems unreasonable and I should think that common-sense morality would say the same.

3.3 Fairness:

Hooker places special importance on fairness and how the ideal code can promote this. The rule pertaining to fairness works in a similar way to how the disaster avoidance clause works. It is a rule that allows us to forego the ideal code in situations where unfairness would otherwise arise due to others not following the ideal code or in situations where the ideal code might make it permissible for us to act unfairly towards others. There are two particular situations that Hooker seems to consider as unfair. The first is in regards to the familiar utopianism problem i.e. in situations where the ideal code demands that we perform an action that, if everyone performed it, would produce the best consequences, yet since no one is following the ideal code you personally performing the action would only be a burden to yourself without producing any benefit whatsoever. Hooker considers this outcome unfair and thus allows the agent to abandon the ideal code of rules (Hooker 2002, p 122-124). In these cases, Hooker would be able to avoid the utopianism problem even in cases where the disaster-avoidance clause would not go into effect.

The other situation that Hooker deems unfair is in regard to people’s innocent expectations. For example, in cases where our expectations regarding the ideal rules that are used to determine the conditions for binding contracts are different from those of the actual ideal code of rules, or put in another way, situations where the ideal code would allow us to nullify a contract forged with non-ideal rules. To see this issue Hooker uses an example wherein two people, Jack and Jill, forge a binding contract between themselves. In this world, the ideal code of rules states that the ideal conditions for signing a contract is one where parties take a minimum of fourteen days to reflect upon the contract. The bindingness of any particular contract is thus contingent on this minimum being met. Now, in the situation at hand, Jack and Jill live in a society whose conventional rules do not demand a minimum of fourteen days to contemplate the impending agreement. Furthermore, they are both unaware of the nature of the ideal rule for contracts. They thus forge a contract that state that for every million dollars one of them makes, they must share a quarter with the other. This contract is made with only ten days spent in reflection on the agreement. After ten years of the contract being in effect Jack becomes aware of the ideal rule for long-term contracts. As it happens, he is about to get paid one million dollars for a job. The question then arises, would it be morally permissible for Jack to render the contract null and void by pointing to the ideal code of rules. Hooker thinks that nullifying the contract at this stage would be seriously unfair to Jill who signed the contract expecting it to hold. Since she was unaware of the ideal rule it is unreasonable to demand that she should expect otherwise. She had an “innocent expectation” that the contract would hold. The fairness rule is thus not only able to allow an agent to forego the code in certain cases of general non-
compliance but also to demand that we break the code in order to honour agreements that the ideal code would not have sanctioned (Ibid).

Arneson finds the application of the fairness rule problematic. He questions why it is that the concept of fairness, no matter how it is defined, seemingly only matters in some cases but not others. That morality in certain cases demands that we forego the ideal code and instead act so as to treat ourselves and others fairly suggests that fairness is something that matters morally in and of itself. The question then arises: why does fairness only matter in certain situations such as in regards to widespread noncompliance and not overall across the board? Arneson further points out that, if fairness does indeed matter morally, then it would seem to be a definitive non-consequentialist value more in line with some form of pluralist intuitionism.

Hooker agrees with Arneson that the above-mentioned questioning is problematic for his version of rule consequentialism. If we demand that people forego the ideal code in situations where others do not follow the code, which in reality might be most situations, we may find that a great many situations fall under this category. Thus, we are no longer really using a rule-consequentialist framework to determine what the moral thing to do is. Hooker does however identify a problem with the fairness rule that goes even deeper than the issues identified by Arneson. As previously stated, one of the purposes for the fairness rule was that we could not nullify contracts that were forged without adherence to the ideal code of rules. The problem for sophisticated rule consequentialism arises when we consider the fact that the ideal rule for forging contracts may itself change. Recall the example of Jack and Jill where Hooker would ask Jack to forego the ideal code and instead act fairly i.e. not nullify the pre-existing contract. Let us now consider a different situation where we forge a contract on Monday. This contract is forged with adherence to the ideal rule for long term contracts. We might call this rule the Monday contract rule. Suppose now that on Tuesday, the optimal rule for long-term contracts is different. Let us call this the Tuesday contract rule. Let us also suppose that the Tuesday contract rule is formulated so that it conflicts with the terms of the Monday contract rule. The Monday contract rule might demand that the signing of all contracts must be witnessed by a neutral party while the Tuesday contract rule lacks such a demand while instead demanding that all valid contracts are sealed with a small gift to the other party. The rules are in conflict and we may then ask ourselves if we are morally required to abide by the contract we made on Monday in accordance with the Monday contract rule. Hooker points out that this issue has the potential to repeat ad infinitum as the ideal rule for contracts becomes the Wednesday contract rule (Hooker 2005, p 273-274).

Sophisticated rule consequentialism struggles to deal with this issue. Since Hooker agrees with Arneson in regards to the strangeness of the fairness rule he cannot invoke it here. Even if the concept of fairness was not rendered suspect by Arneson’s criticism, it would not be possible to apply it in the case of the ever-shifting rules for contracts. As we might recall, the primary purpose and justification for the fairness rule was to promote, as the name
implies, fairness. It allowed us to forego the ideal code when following it would lead to serious unfairness to ourselves or to others. The situation with the rapidly changing code does not however seem to be a matter of fairness but rather a problem of a more structural nature. Hooker sees it as critical that rule consequentialism is able to deal with variation in the ideal code over time especially in regards to contracts. If we are aware of the possibility that the ideal rule for long-term contracts may change then we may be averse to making such contracts since they may not be binding beyond Monday or whichever day it is signed. Since Hooker agrees with Arneson in regards to the strangeness of giving fairness a foundational role he abandons fairness in favour of a rule that assures us of the fact that our contracts will be binding beyond the initial moment the contract is made. This rule would demand that we abide by all contracts (with the exception of slavery contracts) we make as long as the terms of the contract were mutually accepted by both parties during the time of the agreement. An old agreement is thus valid even if there is a new ideal rule for long-term contracts. This rule seems to allow sophisticated rule consequentialism to avoid the problems raised by code variation at least in regards to contracts. The abandonment of fairness does however raise a new problem. If we recall, there were two situations where the fairness rule came into effect one of which was when the ideal code demands that we act in ways that, if everybody acted accordingly, would produce the best consequences yet since none are actually adhering to the code, you acting in accordance with it would simply be overly burdensome to you while not providing any benefit. In these situations we were allowed to forego the ideal code and instead act fairly. However, since we have abandoned the fairness rule we must now demand that people follow the code even when doing so would be unfair.

A separate problem that arises from the possibility of the ideal code being in a constant state of flux is the problem of the rising costs of internalization. Hooker makes it clear that the ideal set of rules that would bring about the best results would be relatively simple. It is possible to imagine a hypothetical code that is so complex that it gives a unique tailor-made recommendation for what a person should do in every possible scenario. However, the costs of teaching such a code to regular humans would be immense, perhaps to the degree that internalization would become impossible in practice. Thus, when comparing different codes to determine which is the ideal one, we must take into account the cost of internalization (Hooker 2002, p 96). This brings us back to the problem of the changing code. As I am sure is evident, a code that constantly changes from day to day would be quite hard to learn, if learning it is even possible at all. Some types of rules would of course be more likely to fluctuate than others. General rules such as prohibitions against lying would likely not change. The rules that would be susceptible to this problem would be rules describing the optimal way to go about specific processes.

In conclusion, while Hooker seemingly solves one of the problems that the fairness rule was meant to deal with, i.e. the problem of changing codes as it relates to contracts, when it comes to the other cases which Hooker deemed unfair we are left without a suitable replacement. Furthermore, the problems that arise due to the possibility of an ever-
changing ideal code seem to be larger in scope than just the issue of long-term contracts. These are all serious problems for sophisticated rule consequentialism.

4. Conclusion:

As we have seen, Hooker presents an interesting moral theory. It combines rule consequentialism with the considerations of common-sense morality. Arneson levels several criticisms against Hooker’s theory, three of which I have discussed in this essay. The first is in regards to the plausibility of viewing the aligning judgements of common-sense morality and sophisticated rule consequentialism as something that justifies the theory in situations where it asks us to act sub-optimally. In section 3.1 I questioned whether Arneson’s claim that combining consequentialist and deontological concerns necessarily makes a moral theory incoherent. I ultimately deemed that Arneson failed to make a convincing enough case that this is the case. The second of Arneson’s criticisms was in regards to how the disaster avoidance rule fails to account for near-disaster. I concluded that Hooker, although able to avoid the issues raised in Arneson’s specific example, was unable to defend his theory against the near-disaster problem on the whole. Finally we discussed fairness. Here Arneson brought up how it is strange to give fairness a critical role in some cases while not in others. Hooker agreed with Arneson that this is indeed problematic for his view. Furthermore, he brings forth another problem with his own view, namely the issue of a changing ideal code. I concluded that Hooker was unable to fully solve the issues brought forth by Arneson and the shifting code.

As we can see, sophisticated rule consequentialism is a theory with serious problems, some of which Hooker admits and some that he is unable to adequately solve despite his best efforts. Although he is able to deflect one of Arneson’s criticisms he fails to solve the issues raised by the other two. I thus conclude that Hooker fails to adequately defend his theory from the criticisms that are raised.
References:

