

Hooker's Rule-Consequentialism and Scanlon's Contractualism – a Re-evaluation

JUSSI SUIKKANEN

Final Author Copy. To be published in *Ratio*, a special issue in honour of Brad Hooker, edited by Charlotte Newey and Luke Elson.

ABSTRACT: Brad Hooker's rule-consequentialism and T.M. Scanlon's contractualism have been some of the most debated ethical theories in normative ethics during the last twenty years or so. This article suggests that these theories can be compared at two levels. Firstly, what are the deep, structural differences between the rule-consequentialist and contractualist frameworks in which Hooker and Scanlon formulate their views? Secondly, what are the more superficial differences between Hooker's and Scanlon's formulations of these theories? Based on exploring these questions and several purported differences between Hooker's and Scanlon's views, this article argues that, at the structural level, the two theories are more similar than previous recognised. It suggests that there is only one candidate for a deeper difference and even it may not be that significant. This insight sheds new light on both contractualism and rule-consequentialism, and it will also help us to formulate better versions of the views.

KEYWORDS: Brad Hooker, contractualism, ethical theory, normative ethics, rule-consequentialism, T.M. Scanlon.

1. Introduction

In the late 1990s and early 2000s, many of the key debates concerning ethical theories focused on Brad Hooker's (2000) rule-consequentialism and T.M. Scanlon's (1998) contractualism. Even if it was sometimes noted that these two views resemble one another in many ways, in the previous debates they were considered to be radically conflicting views. That these two theories share several important elements is, however, not an accident. This is because neither Hooker nor Scanlon developed their theories in isolation of other views but rather they did so by exploring both the advantages and problems of different theories. Their discussions of different ethical theories are charitable and sophisticated, and they often develop the alternatives further before presenting insightful objections to them. Hooker, for example, has often focused in a sympathetic and yet critical light on Scanlon's contractualism (Hooker, 2000, p. 8, 2003, pp. 66-79). Scanlon's

contractualism thus provided Hooker with a useful contrast against which he could formulate his version of rule-consequentialism.

In this article, I want to suggest that the debates that followed the publication Hooker's *Ideal Code, Real World* and Scanlon's *What We Owe to Each Other* failed to consider systematically enough the similarities and differences between rule-consequentialism and contractualism. One of the main reasons for this is that it was not sufficiently understood that Scanlon's theory is a *version* of contractualism and Hooker's theory a *version* of rule-consequentialism. Scanlon's view, for example, has a certain general contractualist structure that enabled him to formulate his own more specific version of contractualism by making certain theoretical choices, and likewise Hooker's view too has a rule-consequentialist structure that allowed him to formulate his own more specific version of rule-consequentialism.

This thought allows me to try to put certain things right here that just have not been recognised before. The key thought will be that we can compare Scanlon's contractualism and Hooker's rule-consequentialism at two different levels. Firstly, we can ask at the more general level what are the structural similarities and differences between the contractualist and rule-consequentialist theoretical frameworks. What makes certain ethical theories rule-consequentialist and others contractualist? ¹ Secondly, we can also ask what the more contingent similarities and differences between Hooker's and Scanlon's versions of these views are, ones where Hooker could have, for example, formulated his rule-consequentialism in the same ways as Scanlon does his contractualism (or vice versa).

This article investigates the previous questions. It sheds new light on contractualism and rule-consequentialism by locating more precisely both (i) the more fundamental structural similarities and differences between the frameworks and (ii) the more superficial differences between Scanlon's and Hooker's versions of them. It will argue that contractualist and rule-consequentialist theories are more similar than previously recognised. §2 first goes through five different elements of contractualism and rule-consequentialism and also suggests that only one of these is a candidate for a deeper structural difference. I will also argue that even this difference based on how different moral codes are to be ranked may not be significant. The rest contain more superficial similarities and differences, theoretical choice-points which allow us to formulate different forms of rule-consequentialism and contractualism. Finally, §3 returns to Hooker's objections to contractualism in the light of the previous discussion.

2. Similarities and Differences

This section focuses on the similarities and differences both between (i) contractualism and rule-consequentialism generally and (ii) Scanlon's version of contractualism and Hooker's version of rule-consequentialism. These include the set of compared options (§2.1), the comparison bases (§2.2), actualist and probabilist structures (§2.3), the ranking of the relevant options (§2.4 and §2.5), and the reasons for being moral (§2.6). I argue that the only fundamental difference between

¹ This question cannot be merely answered by claiming that all contractualist theories rely on the notion of a contract or an agreement (Southwood, 2009, p. 926). This would arguably rule out Scanlon's view as a form of contractualism.

contractualist and rule-consequentialist views is the way the relevant options are ranked, though I also suggest that even this difference may not be significant.

2.1 Compared Options

Contractualism and rule-consequentialism are theories about the rightness and wrongness of actions. Scanlon's account is not an account of the meaning of 'right' and 'wrong', or of what makes actions right and wrong, or even of under what conditions actions are right or wrong, but rather an account of the properties of moral rightness and wrongness (Scanlon, 1998, pp. 10–12).² It is thus also an account of the subject-matter of our judgments of right and wrong (*ibid.*, p. 6). Hooker is slightly less explicit on this issue. His theory seems to be a theory of under which conditions actions are right and wrong, of what determines which actions are right and wrong, and of what explains our more specific moral convictions and justifies them from an impartial point of view (Hooker, 2000, p. 4 and p. 32, Hooker 2003, p. 61). Yet, the focus is on right and wrong, and so the previous difference in specifying the subject-matter is not really a difference between contractualism and rule-consequentialism *per se*.

Both theories also have an indirect structure. Neither evaluates the rightness and wrongness of actions directly in the way act-consequentialism does. Rather, according to them, whether an action is right or wrong is determined by whether it is authorised or forbidden by certain moral principles. Those principles are then a result of certain rule-consequentialist or contractualist comparisons. When we look at these comparisons, the differences and similarities between the views begin to emerge.

We first need a set of options to compare. For Hooker, these options consist of whole moral codes (Hooker, 2000, §3.5). They are not lists of fully spelled out prescriptions, but rather accepting a moral code consists of having a moral conscience of a certain shape. This conscience consists of various complex aversions and motivations of varying strengths to do and avoid different actions, dispositions to apply the rules in certain ways especially in conflict cases, and other sensitivities, emotions, and beliefs that all amount to having a certain kind of a character (Hooker, 2000, pp. 90–91).

Scanlon, in contrast, compares different individual principles that could govern a given domain of behaviour (such as truth-telling, promise-keeping, and so on). As he puts it (1998, p. 214):

... a sensible contractualism ... will involve a holism about moral justification: in assessing one principle we must hold many others fixed. This does not mean that these other principles are beyond question, but just that they are not being questioned at the moment.

On Scanlon's view, the compared options are individual principles that could govern a domain, and when we compare those principles the comparison process relies on the principles that govern

² See Hooker (2003, pp. 60–62), Timmons (2003), Scanlon (2003a, pp. 434–439), and Stratton-Lake (2003).

other domains.³ Once we have selected a principle for one domain, it then becomes a part of the stock of principles we can rely on when we compare the principles to govern other domains.

This difference between comparing whole codes and individual principles is not a deep structural difference between rule-consequentialist and contractualist theories. There are versions of rule-consequentialism that compare individual principles for a given domain whilst keeping the other principles fixed. Likewise, contractualists can equally well compare whole moral codes (Hooker, 2003, p. 66). Thus, the focus on moral codes vs. individual principles is a difference between Scanlon's contractualism and Hooker's rule-consequentialism, but not a structural difference between contractualist and rule-consequentialist views generally. It's merely a disagreement concerning how to formulate the most plausible versions of these views.

Here I side with Hooker for the following reason. Let us assume that we compare individual principles. We start from one domain and the principles to govern it, and we choose the rule-consequentialist or contractualist principle for that domain whilst keeping the others fixed. We then add that principle to our stock of principles and move on to compare the principles for the next domain until we reach a set of principles to which no improvements can be made using this process. We can then compare the resulting set to the one that we get if we compare whole codes in either rule-consequentialist or contractualist way. If the two sets are identical, going through the comparisons of the individual principles was redundant. The second option is that the sets are different. However, because of the way in which the second set was identified through comparing all the alternative moral codes, the set we reached through comparisons of individual principles cannot then be the one that has the best consequences or the one that leads to the least serious objections. In this case, the comparison of individual principles would have led to a set that could not be defended on rule-consequentialist or contractualist grounds. Hooker was thus right to compare complete codes.

2.2 Comparison Bases

We then need a 'comparison base', something that enables us to compare the previous codes. Here we can rely on the possible worlds machinery. We can assign each moral code we could internalise a possible world (or a set of worlds) in which that code has been internalised by those who live in that world. In other respects, these worlds are as close to our actual world as possible. They have the same natural resources, the same species, human beings have the same characteristics including our cognitive abilities, there are as many of them as there are in our world, and so on.⁴ The only difference between the worlds is which moral code has been internalised in them. The internalisation of the principles will then come to have a significant impact on what kind of lives individuals live in these worlds and hence on what happens in them more generally.

There is, however, something important both contractualists and rule-consequentialists must decide here, namely the social acceptance rate. How many people in the relevant worlds have

³ For Scanlon (1998, pp. 197–202), principles are not simple easily storable and applicable rules but rather more complex 'conclusions about the status of various kinds of reasons for action' that 'leave wide room for interpretation and judgment'. See Scanlon (1998, p. 157, p. 214, and p. 218) and for a discussion Hooker (2003, pp. 62–66).

⁴ Thus, the 'circumstances of justice' obtain in these worlds (Rawls, 1999, pp. 109–110).

internalised the codes we are comparing? Scanlon does not explicitly address this question, though he suggests the following (Scanlon, 1998, p. 195, my emphasis):

In order to decide whether this is so [whether a principle permitting a certain action, X, can be reasonably rejected], we first need to form an idea of the burdens that would be imposed on some people in such a situation if *others* were permitted to do X. Call these objections to permission. We then need, in order to decide whether these objections provide grounds for reasonably rejecting the proposed principle, to consider ways in which others would be burdened by a principle forbidding one to do X in these circumstances.

I have always read the italicised ‘others’ above to be *all inclusive* and hence assumed that Scanlon compares the principles at 100% level of social acceptance. I might, however, be wrong about this.

Hooker (2000, §3.3), in contrast, argues explicitly against comparing codes at the 100% level of acceptance. Firstly, not every mentally impaired person or child could internalise the relevant codes. Secondly, we also need principles that govern moral disagreements and how to treat people when they are ‘malevolent, dishonest, unfair, or simply misguided’ (Hooker, 2000, p. 80). It is therefore better to compare the codes under a less than perfect level of social acceptance where still an ‘overwhelming majority’ has internalised them (Hooker, 2000, p. 84):

Acknowledging that any one percentage will nevertheless be somewhat arbitrary, I propose we take internalization of 90 per cent of each new generation as the figure to use in the cost-benefit analysis.

Is the level of social acceptance a deep difference between contractualist and rule-consequentialist theories, or merely a difference between Scanlon’s and Hooker’s formulations? Again, the latter is more plausible. Someone could defend a version of contractualism that compares the moral codes at 90% of acceptance or a version of rule-consequentialism that does so at 100% level. Hooker is also right to compare the principles at a less than 100% level, and I agree with him about the reasons for this.⁵ However, we can also improve his suggestion that we should compare the codes at a 90% level of acceptance.

Elsewhere, I have suggested that each moral code also contains an inculcation element, a set of guiding principles for what each generation is expected to do to get the next generation to internalise their moral code.⁶ This means that each code, depending on how demanding and efficient its inculcation element is, leads to a certain equilibrium level of social acceptance where this level will be high for some codes and low for others. We should then compare the codes at

⁵ Comparing codes at less than 100% acceptance leads to a thorny problem of what the others are doing as this can change the consequences of the relevant codes. See Smith (2010) and Suikkanen (2017).

⁶ See Smith (2010) and Suikkanen (2014).

these equilibrium levels, which thus provides a contractualist or a rule-consequentialist justification also for the moral principles governing moral inculcation and disagreements.

2.3 Actualism and Probabilism

Take Jake's action of flipping the light-switch to turn the lights on. Let's imagine that when he flips the switch, faulty wiring causes an explosion at the neighbour's house killing two people. Here, the actual consequences of Jake's action are very bad, much worse than what would have happened had he not tried to switch the lights on. Because of this, actual value act-consequentialism claims that Jake did something wrong.

In contrast, expected value act-consequentialism begins from the idea that any action has multiple outcomes it could bring about. So, here, one possible outcome is the explosion, another that the light just comes on, and so on. Each possible outcome then contains a certain amount of value and there is a certain probability for that outcome to come about. The expected value of an option is then the sum of all the products of multiplying the value contained in each possible outcome with the probability of that outcome. Expected value act-consequentialism then claims that the actions that maximise expected value are right, and all other actions wrong. In the previous case, even if the actual outcome of switching the light on was very bad this would still not make the expected value of that option low given how improbably it was that there would be an explosion. This is why expected value act-consequentialism often has more intuitive consequences.

We can then stipulate that actual value act-consequentialism has an actualist structure and expected value act-consequentialism a probabilist structure. Hooker explicitly formulated his version of rule-consequentialism to have the latter structure (Hooker, 2000, pp. 2–3). He recognised that the adoption of a code would actually come to have certain consequences and that outcome will contain a certain amount of value. However, the adoption of that code need not necessarily have those consequences. There are several different outcomes the internalisation of a given code could bring about, each such outcome will contain a certain amount of value, and there is also a certain likelihood that the internalisation of a code brings about a certain outcome. The expected value of a given code then is the sum of all the products we get by multiplying the probability of each possible outcome of internalising the code with the amount of value the outcome contains. Rule-consequentialists thus must choose between whether the rightness of actions is determined by the code the internalisation of which actually has the best consequences or by the one the internalisation of which maximises expected value. Hooker explicitly formulates his view in terms of expected value and so his view has a probabilist structure.

What about Scanlon's contractualism? The contractualist literature uses here different terminology. There is a debate between *ex post* and *ex ante* contractualists, where the *ex post* views have an actualist structure akin to actual value rule-consequentialism and *ex ante* views a probabilist structure similar to expected value rule-consequentialism. Scanlon (1998, p. 208) originally opted for the actualist, *ex post* structure:

I maintained above that in considering whether a principle could be reasonably rejected we should consider the weightiness of the burdens it involves, for those whom they fall,

and the importance of the benefits it offers, leaving aside the likelihood of one's actually falling in either of these classes.

This suggests that, in the contractualist comparisons, Scanlon focuses on what actual consequences the adoption of the principles will have for different individuals, and thus his view has the same actualist, *ex post* structure as actual value rule-consequentialism.

However, as Scanlon (1998, pp. 208–209) anticipated, we can also formulate versions of contractualism that have a probabilist structure like expected value rule-consequentialism. This can be done in two ways.⁷ Let us compare two codes A and B and assume that both have only three potential outcomes: p, q, and r for A and s, t, and u for B. Each of the three outcomes have certain likelihood where these probabilities sum up to 1, and in each outcome every individual comes to live a certain kind of a life with its burdens and desirable qualities.

The first *ex ante*, probabilist contractualist view, called *expected maximum burdensomeness* view, picks from each world [A, p], [A, q] and [A, r] the most burdened individual. We can then multiply the 'burdensomeness score' of those lives with how likely it was that we would get that outcome as the result of the adoption of A, and finally add those products together to get an expected maximum burdensomeness score. This version of contractualism would then compare those values for A and B, and state that the code that has a smaller expected maximum burdensomeness figure could not be reasonably rejected. This corresponds to the likelihood that *someone* comes to bear a serious burden due to the code (Scanlon, 1998, p. 208).

The second *ex ante*, probabilist contractualist view is based on *maximum expected burdensomeness*. On this view, for every individual, we first calculate the expected burdensomeness of a given code. So, for Peter, we consider how burdensome his life would be in [A, p], [A, q] and [A, r], and we then calculate code A's burdensomeness expectation for him by summing up the products that we get by multiplying how burdensome Peter's life is in each outcome by the probability of those outcomes. We then compare A and B by first locating the individuals who have the highest expected burdensomeness scores under them. Whichever one of these individuals has the lower burden expectation lives under the code that cannot be reasonably rejected.

Scanlon (1998, pp. 208–209) argued for the *ex post* actualist versions of contractualism because the *ex ante* views have implausible consequences when we think of medical policies that would benefit a vast number of people by coercing a tiny minority to undergo painful involuntary medical experiments. This is because, *ex ante*, these principles are better for every individual given how unlikely it is that they will be experimented on. Yet, Johann Frick (2015) argues that the *ex post*, actualist versions of contractualism have equally implausible consequences in social risk imposition cases. Since then, there has been a lively debate about whether contractualist theories should be formulated to have the actualist structure of the *ex post* views or the probabilist structure of the *ex ante* views (or some hybrid structure that combines elements of both).⁸

⁷ See Suikkanen (2017, §3.3). Both options were mentioned by Scanlon (1998, p. 208).

⁸ Defenders of the *ex post* views include Reibetanz Moreau (1998), Otsuka (2015), Holm (2018) and R ger (2018), defenders of *ex ante* views Kumar (1999), James (2012), and Frick (2015), and defenders of hybrid views Lenman (2008) and Suikkanen (2019). Scanlon (2013) also changed his mind to an *ex ante* view.

Is the probabilist and actualist structures of Hooker's and Scanlon's views a deep difference between the general rule-consequentialist and contractualist frameworks or merely a difference between their respective formulations? The latter is again more plausible because there are both actualist and probabilist versions of both rule-consequentialism and contractualism. Hooker had his reasons for opting for an expected value view, but had he gone the other way his view would still have been rule-consequentialist. Likewise, Scanlon had his reasons for opting for an actualist version of contractualism, but he too could have gone the other way (Scanlon, 2013). The question of actualist and probabilist structures thus does not divide rule-consequentialists and contractualists theoretically but rather it is a question of how these views are best formulated generally.

2.4 Ranking of the Options

If any difference between the general rule-consequentialist and contractualist frameworks is to be significant, it is the next one. We now have a set of options (codes or principles) to compare, a set of worlds in which these codes have been internalised (by some majority), and we are to compare the codes either in terms of their actual or expected consequences. We then need a ranking of the codes based on the worlds that correspond to them (and their likelihoods if we are probabilists). The defining difference between the rule-consequentialist and contractualist views could then be in the ways in which they rank the options based on the previous worlds.

Rule-consequentialist views rank the moral codes in terms of how much actual or expected value will be produced by adopting those codes. The simplest rule-utilitarian versions claim that only well-being has value and so we first need to aggregate inter-personally together the total amount of well-being contained in each world within the set of compared worlds.⁹ Simple actual value rule-utilitarianism would then claim that the moral code the adoption of which would bring about the highest total amount of well-being ranks first, and thus it determines which actions are right and wrong. Likewise, the expected value version of this view would claim that the moral code that has the highest total well-being expectation ranks first, and thus determines which actions are right and wrong.

Rule-consequentialists can also formulate more complex versions by developing more sophisticated value measures. Instead of the total amount of well-being, they could focus on the average or mean amount of well-being. They could also defend more egalitarian distributions by focusing on the weighted sum of well-being where, before we aggregate personal well-being, we multiply the well-being of the worst off by some factor (Hooker, 2000, §2.7). Rule-consequentialists can furthermore include in the value measure other intrinsic values such as fairness, equality, knowledge, biodiversity, and so on. But, whatever choices rule-consequentialists make here, they need an evaluative standard to rank possible worlds in terms of how much value they contain.

What distinguishes all forms of contractualism from versions of rule-consequentialism could then be that contractualist theories do not rank the worlds in terms of any evaluative value measure but rather they do so by relying on some non-evaluative, normative notion such as reasons, ought, or rationality. On Scanlon's (1998, §5.4) view, we first identify what kind of lives different individuals would come to live under the principles we could internalise. We can call these lives 'standpoints'.

⁹ See Brandt (1959, §16.3) and Frankena (1973, ch. 3).

Each standpoint then contains some burdensome elements, things that will be reasons not to want to live that kind of a life. Individuals will then have reasons to make objections to the principles they live under, to the principles the adoption of which is causally responsible for making their lives burdensome (Scanlon, 1998, p. 195). The strength of these reasons then determines the principles that cannot be reasonably rejected, where these principles are the ones that are normatively ranked first of the relevant alternatives. The non-rejectable principles are such that no one can reject them because, for each other alternative, there is at least one individual who has to bear burdens that are so serious that no one has to bear such burdens under the non-rejectable principles.

Here, for the contractualists to claim that the non-rejectable principles are such that there are stronger objections to all other principles is analogical to the rule-consequentialists claiming that the ideal code is such that it has the best consequences. In the same way as the rule-consequentialists need a theory of value that can be used to measure the goodness of different outcomes, the Scanlonian contractualists need a first-order theory of what features of different standpoints are reasons to reject principles and how strong reasons they are.

Scanlon stipulated that the compared objections must be based on the features of the individual's life who is making the objection (Scanlon, 1998, p. 219). This *individualist restriction* rules out the idea that I could object based on how the principles we live under burden both you and me. It excludes aggregating many people's burdens together into a stronger objection.¹⁰ This is why Scanlon claims that his version of contractualism offers anti-utilitarian protections. It does not allow us to burden individuals for the sake of minor benefits for the many.

Yet, even if individuals can object to principles based on how they affect their levels of well-being negatively, for Scanlon (1998, pp. 214–215) this is not the only ground for objections. Rather, Scanlon (1998, p. 204) explains that individuals can also have many other 'generic reasons' to object to the principles they live under. These reasons cannot be based on the 'particular aims, preferences, and other characteristics of specific individuals' but rather they must be based on what kind of burdens people generally have reasons to want to avoid (ibid.). As examples, Scanlon lists bodily injury, not being able to rely on the assurances of others, and not having control over what happens to your own body.

With the previous machinery, Scanlon's contractualism generates a ranking of principles where the non-rejectable principles are ranked first, and the other principles lower the more serious personal objections there is to them. However, just as we can generate different versions of rule-consequentialism with different axiologies, we can create different versions of contractualism by formulating different normative rankings of the compared worlds. There are at least three ways to do this.

Firstly, in Scanlon's framework, we could rely on different first-order accounts of the reasons to reject principles. We could stipulate that these reasons must always be based on well-being, or that it is permissible to aggregate the burdens experienced by different individuals to a stronger reason to reject a principle (Parfit, 2003). Secondly, instead of focusing on reasons to reject principles, we could formulate contractualism in terms of which moral code everyone has the strongest reasons

¹⁰ For discussions of this constraint, see Ridge (2001) and Parfit (2003).

to see to it that everyone internalises (Parfit, 2011, p. 355). Finally, contractualists could also rank the relevant moral codes in terms of other normative, non-evaluative notions such as rationality. They could rank those codes, for example, in terms of which moral code either decision theoretically or deliberatively rational agents would agree to accept (Gauthier, 1986, Southwood, 2010).

It could then be claimed that we have arrived at the deep, structural difference that distinguishes all versions of rule-consequentialism from all versions of contractualism. Whereas all versions of rule-consequentialism rank different codes evaluatively, all versions of contractualism rank them by relying on some non-evaluative, normative notion such as reasons, ought, or rationality. And so, given this deep difference between the theories, we could then have a meaningful debate about which is correct. Do we get a more plausible ethical theory by relying on an evaluative or a normative ranking? The next section, however, outlines two reasons for why even this difference may not run so deep.

2.5 Two Concerns

My first concern is that, in the fitting attitude and buck-passing accounts traditions, many argue that evaluative notions, goodness and value, can be reductively analysed in normative terms such as reasons and fittingness.¹¹ Parfit, for example, suggested that when we consider the worlds corresponding to different moral codes their evaluative ranking can be understood in terms of which of the worlds an impartial spectator has most object-given reasons to prefer from an impartial point of view (Parfit, 2011, ch. 16). If evaluative notions are reducible to normative notions in this way, this is a problem for the idea that the deep difference between rule-consequentialist and contractualist theories is whether they rank moral codes evaluatively or normatively. There would exist just one alternative, a normative ranking, which would make all rule-consequentialist theories forms of contractualism.

To resist this collapse of rule-consequentialism into contractualism, we could try two things. Firstly, we could resist the fitting attitude and buck-passing accounts of value and the reduction of evaluative properties into normative properties. Secondly, we could argue that, even if in the case of rule-consequentialism the evaluative could be reduced to the normative in the way just suggested, we can still end up with very different theoretic structures. One way to pursue this line of thought is to try to draw the distinction between rule-consequentialism and contractualism, not based on the evaluative/normative distinction, but rather by relying on which particular reasons they focus on in the normative ranking of the relevant worlds and their codes. It could be argued that the rule-consequentialist views must rank the codes in terms of an impartial observer's reasons, whereas contractualists must rank the same codes in terms of what reasons located individuals living under the codes have for objecting to them from their partial, personal standpoints. This is an interesting difference between two types of ethical views, but whether it has the significance associated with the rule-consequentialism versus contractualism debate is questionable.¹²

¹¹ See Scanlon (1998, ch. 2), Suikkanen (2009), and Jacobson (2011).

¹² This way of drawing the distinction would make Rawls's (1999) contractualist theory of justice a version of rule-consequentialism. Relatedly, it could be suggested that the difference must be that all rule-consequentialist theories are based on aggregative, agent-neutral value, whereas all contractualist theories must be based on agent-relative reasons that are not aggregated. However, some forms of contractualist take aggregated agent-relative reasons into

Finally, let me introduce a deeper problem based on the idea that both Hooker and Scanlon are committed to the *reflective equilibrium methodology*. Hooker (2000, p. 4) puts this in the following way:

Moral theories must cohere with (i.e. economically systematize, or, if no system is available, at least endorse) the moral convictions we have after careful reflection.

Scanlon (2003b, p. 149) similarly states that:

Moreover, it seems to me that this method, properly understood, is the best way of making one's mind up about moral matters, and about many other subjects.

These quotations suggest that, for both, an important *desideratum* is that ethical theories are to be extensionally adequate and so fit our carefully considered moral convictions. Both want to find a ranking of the moral codes based on the compared worlds where the first ranked code fits our carefully considered moral convictions the best and the lower down ranked codes clash more with those same convictions.

This leads to a new concern. The first implication is that, assuming their first-order moral convictions do not differ, both Scanlon and Hooker rank similar moral codes first, and so their theories are in this sense co-extensive. The second implication is that both are working with similar rankings of the other codes too. The concern then is that Hooker and Scanlon are then trying to find different ways of representing the ranking they agree on. One indication of this consequence is the methodology both rely on in the process of coming to formulate their respective versions of rule-consequentialism and contractualism. Both Hooker and Scanlon rely on their carefully considered moral convictions in the process. We can see this in how Hooker (2000, pp. 2–3 and §2.7) opts for expected rather than actual value and also for prioritising the well-being of the worst off, and likewise in how Scanlon (1998, p. 235 and pp. 208–209) rejects interpersonal aggregation and the *ex ante* versions of contractualism. This suggests that Hooker is trying to find an elegant evaluative way of representing how different moral codes rank in the intuitive order, and likewise Scanlon an equally elegant way of representing that same ranking in terms of the strengths of the reasons individuals have for rejecting different principles.

This suggests that, instead of a deep theoretical difference and conflicting views of the same subject matter, we have merely two different ways of representing the same moral reality both with respect to (i) how different moral codes compare to one another and (ii) also in terms of which actions are right and wrong as determined by the code ranked first.¹³ This is supported by the thought that we can translate each theory to the language of the other. Whatever it is that makes a given moral code and a world rank first for the rule-consequentialists (for example, the total

account (Parfit, 2011) and there could be versions of rule-consequentialism based on non-aggregative agent-relative value.

¹³ For defence of this idea that extensionally equivalent theories are notational variants of each other, see Dreier (2011). Here it could be objected that the theories provide conflicting theories of right- and wrong-making qualities of actions (Portmore 2009, §6). For responses, see Dreier (2011, p. 112) and Suikkanen (2021, pp. 256–259).

amount of well-being), a contractualist can translate that theory to her own language by claiming that the very same considerations (less of total well-being) provide sufficient reasons to reject all other moral codes. Likewise, whatever makes moral codes reasonably rejectable and thus rank lower in the relevant ranking (the most serious reasons to make objections to the codes based on serious personal burdens) for the contractualists, the rule-consequentialists can translate this theory to their language by stipulating that those very same things make the outcomes of the relevant codes evaluatively worse.

There is thus a threat that there is no deep substantial difference between rule-consequentialist and contractualist views. Both have a similar indirect structure, and both also have points where we can choose between different versions of the views where those choices can be made in similar ways in both frameworks. Yet, because both contractualists and rule-consequentialists agree on which actions are right and on the ranking of the moral codes that determines the code that picks out those actions, the only genuine difference left seems representational.¹⁴ How we are to represent that ranking? Is it better to do this in evaluative terms or normative terms? Going either way can reveal more interesting structural features of our carefully considered convictions (Dreier, 2011, §4), it can be more or less elegant and simple and thus more or less explanatory (Hooker, 2003, p. 74), and even more or less fruitful when it comes to thinking about new difficult ethical questions (Suikkanen, 2020, §6, 2021). Yet, our theory choice becomes here a more pragmatic issue. One option is to accept both theories as I am now inclined to do and to think that both ways of representing the same moral reality can be useful in different contexts.

2.6 Reasons to be Moral

Let us consider one further difference between the rule-consequentialist and contractualist frameworks. Sometimes it is claimed that contractualists offer a distinctive view of moral motivation and especially of the normative reasons we have for acting morally that puts the contractualist views in conflict with all rule-consequentialist views.

What are the contractualist reasons for following the non-rejectable principles? The key idea is that following these principles enables you to justify your actions to others on grounds they could not reasonably reject. After all, following any other principles means that you are willing to impose *serious unnecessary personal burdens* on some individuals, which no one needs to bear if we follow the non-rejectable principles (Scanlon, 1998, p. 195). Scanlon (1998, p. 162) then described how being able to justify our actions to others on non-rejectable grounds enables us to form valuable moral relationships of mutual recognition we have good reasons to be in. They are ones in which we can confidently stand by our actions, whereas if we fail to follow the non-rejectable principles we ‘shrink from the gaze of another ...’ (Pettit, 2000, p. 231). Likewise, if we are treated in ways that are not justifiable to us, we condemn this as a failure to recognise our personal standpoint, our objections, and ability to evaluate reasons. We see this as a higher-order moral harm done to us, which makes us withdraw from the person who wronged us.

¹⁴ If the rule-consequentialists and contractualists have different first-order views about how the relevant codes and worlds that represent them rank, according to the current proposal these disagreements can be represented both as evaluative disagreements in the rule-consequentialist framework and normative disagreements about reasons in the contractualist one.

It is, however, difficult to see how this account could be distinctively contractualist. One reason for this is that Hooker's rule-consequentialism relies on an almost identical view and another that Scanlon (1998, p. 189) admits that non-contractualists can accept it too. Hooker (2000, §4.3) denies that we should follow the ideal code because of an overarching commitment to bringing about more wellbeing to the world. He argues that instead the fundamental moral motivation must be our commitment to be able to impartially justify our actions.¹⁵ Here, the only objection Hooker (2000, pp. 103–104) makes to Scanlon is that according to him rule-consequentialism is better able to capture the principles that we can be used for impartially justifying. The issue is thus not over what our reasons to be moral are but rather which principles you need to follow to be able to justify your actions on impartially defensible grounds (Hooker, 2000, §4.4).

This suggests that both rule-consequentialists and contractualists can accept similar accounts of moral motivation based on interpersonal justification. There are also other accounts available for both. Given that many versions of both views emphasise moral codes that match our moral convictions, it could also be suggested that we should follow these codes because it is often in our selfish interests and thus decision theoretically rational (Gauthier, 1986), it leads to mutually beneficial co-operation and an atmosphere of trust and thus increases the total amount of wellbeing (Pettit, 2000), and in it helps us to avoid many first-order complaints such as physical harm, intentionally created and yet disappointed expectations, and the like (Stratton-Lake, 2003). Thus, there are many different accounts of moral motivation available for both rule-consequentialists and contractualists, and so this cannot be what distinguishes the rule-consequentialist and contractualist theories from one another either.

3. Conclusion and Hooker's Objections to Contractualism

§2 suggested that Scanlon's contractualism and Hooker's rule-consequentialism can be compared at two different levels. At the more superficial level, there are interesting differences between the views such as the focus on whole codes or individual principles, comparing things at different levels of social acceptance, or relying on actualist or probabilist structures. These are not deep differences as at these choice-points Scanlon could have made the same choices as Hooker or Hooker the same ones as Scanlon. We can thus create versions of contractualism and rule-consequentialism that are formulated in different ways at these points.

I then suggested that at a deeper, structural level, there is only one candidate for a difference that could distinguish all forms of rule-consequentialism from all forms of contractualism. This is the thought that rule-consequentialist theories must be based on evaluative ranking of the codes in terms of their outcomes whereas according to contractualist views that ranking must be a non-evaluative, normative ranking based on normative notions such as reasons, rationality, or ought. Yet, here too, I suggested that perhaps we can translate evaluative rule-consequentialist rankings into normative contractualist rankings and vice versa, and so this difference does not go deep

¹⁵ Hooker emphasises that his notion of impartial justification is broader than Scanlon's account of justification to other individuals. This is a genuine difference between their versions of the two theories, but I see no reason why other contractualists could not rely on Hooker's broader notion, or other rule-consequentialists on Scanlon's more specific notion.

either. Perhaps we have at best a difference in the way we represent the moral reality of which actions are right and wrong and how different moral codes compare to one another.

This thought has interesting consequences for different objections to both contractualism and rule-consequentialism. These will now often be objections to specific versions of rule-consequentialism and contractualism (such as Hooker's or Scanlon's) rather than to the rule-consequentialist and contractualist frameworks generally. Let me illustrate this with Hooker's three objections to Scanlon's contractualism.

Hooker's first objection is that contractualism fails to explain why we should treat animals well given that justification 'to a rabbit, or a dog, or even a whale, manifestly does not make sense' (Hooker, 2000, p. 69). This is not an objection to the contractualist account of which animal-treating actions are right and wrong (as Hooker (2000, p. 68) grants) but rather to the reasons we have for treating animals well based on the non-rejectable principles given that it makes no sense to talk about justifying your actions to animals or forming relationships of mutual recognition with them. Yet, the problem is that, as saw above, Hooker himself relies on a similar account of moral motivation as Scanlon. For him too, our motivation to follow the ideal code is based on the need to be able to impartially justify our actions. So, when it comes to the question of why we should follow the relevant contractualist or rule-consequentialist code in the treatment of animals, it seems that both Scanlon and Hooker are in the same boat. Either both fail to give a defensible account of moral motivation, being concerned about justifying your actions to animals makes sense after all, or it is not needed if you can justify your actions (including how you treat animals) impartially.

Hooker's second objection is the concern that contractualism is circular, a spare wheel, if our moral convictions are used *within* contractualism to make contractualism match those convictions (Hooker, 2003, p. 58). The worry is that prior moral distinctions are used within contractualism to make it extensionally adequate. Yet, Hooker (2003, pp. 57–66) concludes that this objection has force only against Scanlon's choice to compare individual principles rather than whole sets. The concern is that, if we are allowed to select an individual moral principle for a domain based on the objections that rely on the other fixed moral principles, then contractualism becomes a spare wheel. The real work is done by the other moral principles and the moral distinctions they contain that are based on prior notions of right and wrong (instead of being a result of the contractualist selection-process). This objection can be a good objection to the forms of contractualism that select individual principles, but it cannot be an objection to the versions of contractualism that rank whole moral codes like Hooker's rule-consequentialism. After all, these theories are not relying on moral distinctions that are smuggled in from outside of the contractualist and rule-consequentialist comparisons.

Hooker's (2003, pp. 69–75) final concern is the well-known aggregation problem. It is argued that Scanlon's view has unintuitive consequences when we must choose between, for example, saving one individual from death and saving a large group of people from some slightly less serious harm such as paralysis.¹⁶ In these cases, given her more serious burden, the one individual can reasonably reject any principle that would not require saving her even if intuitively we should save the group. Scanlon (1998, pp. 229–241) himself addressed this concern with the idea of broad categories of moral relevance and the so-called tie-break argument, and others have made more radical changes

¹⁶ See Horton (2021).

to contractualism in response to it. Thus, Frick (2015) suggested that this is a reason to accept a probabilist *ex ante* view and Parfit (2003) rejected the individualist restriction on the relevant objections.

Even if Hooker (2000, p. 74) grants that these moves make contractualism extensionally adequate, he has two remaining concerns. The first is that these modifications to Scanlon's contractualism require making moral assumptions and so scale back contractualism's explanatory ambitions. I am less certain about the force of this concern. If all we need to do is to adopt a probabilist *ex ante* version of contractualism instead of an actualist *ex post* one, this cannot be any more assuming and less explanatory than moving from actual value rule-consequentialism to expected value rule-consequentialism. Hooker's second concern is that making these moves entails that 'the contrast between contractualism and distribution-sensitive rule-consequentialism would fade into only a quite subtle one' (Hooker, 2003, p. 74). I have argued here that this is less of a concern and more an accurate description of how things are.

Acknowledgement

I thank Brad Hooker, T.M. Scanlon, and the audience at the University of Kansas's *Scanlon and Moral Motivation* workshop for helpful comments and questions. I also want to use this opportunity to thank Brad Hooker for inviting me to do my PhD at Reading, for being a wonderful supervisor during my PhD, and also for all the support throughout the years since then.

Bibliography

- Brandt, R. (1959). *Ethical theory*. Englewood Cliffs, N.J.: Prentice-Hall.
- Dreier, J. (2011). In defense of consequentializing. *Oxford Studies in Normative Ethics*, 1, 97–119.
- Frankena, W. (1973). *Ethics*, 2nd ed. Englewood Cliffs, N.J.: Prentice-Hall.
- Frick, J. (2015). Contractualism and social risk. *Philosophy & Public Affairs*, 43(3), 175–223.
- Gauthier, D. (1986). *Morals by agreement*. Oxford: Oxford University Press.
- Holm, S. (2018). The luckless and the doomed. Contractualism and justified risk-imposition. *Ethical Theory and Moral Practice*, 21(2), 231–244.
- Hooker, B. (2000). *Ideal code, real world*. Oxford: Oxford University Press.
- Hooker, B. (2003). Contractualism, spare wheel, aggregation. In M. Matravers (Ed.), *Scanlon and contractualism* (pp. 53–76). London: Frank Cass.
- Horton, J. (2021). Partial aggregation in ethics. *Philosophy Compass*, 16(3), 1–12.
- Jacobsen, D. (2011). Fitting attitudes theories of value. *The Stanford Encyclopedia of Philosophy*, E. Zalta (Ed.), <https://plato.stanford.edu/archives/spr2011/entries/fitting-attitude-theories/>.
- James, A. (2012). Contractualism's (not so) slippery slope. *Legal Theory*, 18(3), 263–292.
- Kumar, R. (1999). Defending the moral moderate: contractualism and common sense. *Philosophy & Public Affairs*, 28(4), 275–309.
- Lenman, J. (2008). Contractualism and risk imposition. *Politics, Philosophy & Economics*, 7(1), 99–122.
- Otsuka, M. (2015). Risking life and limb. In G. Cohen, N. Daniels and N. Eyal (Eds.), *Identified versus statistical lives: an interdisciplinary perspective* (pp. 77–93). Oxford: Oxford University Press.
- Parfit, D. (2003). Justifiability to each person. *Ratio*, 16(4), 368–390.
- Parfit, D. (2011). *On what matters*, vol. 1. Oxford: Oxford University Press.
- Pettit, P. (2000). A consequentialist perspective on contractualism. *Theoria*, 66(3), 228–236.
- Portmore, D. (2009). Consequentializing. *Philosophy Compass*, 4(2), 329–347.
- Rawls, J. (1999). *A theory of justice*: revised edition. Cambridge, M.A.: Harvard University Press.
- Reibetanz Moreau, S. (1998). Contractualism and aggregation. *Ethics*, 108(2), 296–311.
- Ridge, M. (2001). Saving Scanlon: contractualism and agent-relativity. *The Journal of Political Philosophy*, 9(4), 472–481.
- Rüger, K. (2018). On ex ante contractualism. *Journal of Ethics and Social Philosophy*, 13(3), 240–258.
- Scanlon, T.M. (1998). *What we owe to each other*. Cambridge, M.A.: Harvard University Press.
- Scanlon, T.M. (2003a). Replies. *Ratio*, 16(4), 424–439.
- Scanlon, T.M. (2003b). Rawls on justification. In S. Freeman (Ed.), *The Cambridge companion to Rawls* (pp. 139–167). Cambridge: Cambridge University Press.

- Scanlon, T.M. (2013). Reply to Zofia Stemplowska. *Journal of Moral Philosophy*, 10(4), 508–514.
- Smith, H. (2010). Measuring the consequences of rules. *Utilitas*, 22(4), 413–433.
- Southwood, N. (2009). Moral contractualism. *Philosophy Compass*, 4(6), 926–937.
- Southwood, N. (2010). *Contractualism and the foundations of morality*. Oxford: Oxford University Press.
- Stratton-Lake, P. (2003). Scanlon's contractualism and the redundancy objection. *Analysis*, 63(1), 70–76.
- Suikkanen, J. (2009). Buck-passing accounts of value. *Philosophy Compass*, 4(5), 778–779.
- Suikkanen, J. (2014). Contractualism and the conditional fallacy. *Oxford Studies in Normative Ethics*, 4, 113–137.
- Suikkanen, J. (2017). Contractualism and the counter-culture challenge. *Oxford Studies in Normative Ethics*, 7, 184–206.
- Suikkanen, J. (2019). Ex ante and ex post contractualism: a synthesis. *Journal of Ethics*, 23(1), 77–98.
- Suikkanen, J. (2020). *Contractualism*. Cambridge: Cambridge University Press.
- Suikkanen, J. (2021). Ethical theories as methods of ethics. *Oxford Studies in Normative Ethics*, 11, 247–269.
- Timmons, M. (2003). Limits of moral constructivism. *Ratio*, 16(4), 391–423.