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Hooker's Ideal Code and the Sacrifice Problem

A common way of arguing against consequentialism is by a *reductio ad absurdum*, highlighting the fact that, in certain situations, we would be able to maximize well-being by sacrificing or scapegoating an innocent individual. In McCloskey's example, for example, the sheriff of a town frames and executes an innocent man in order to appease an angry mob that is demanding justice.¹ The objection states that the consequentialist is committed to the claim that this is what the sheriff ought to do. The critic then claims that it is not plausible that the correct moral theory could demand the sacrifice of innocent individuals in this way, and therefore consequentialism should be rejected.

For the sake of brevity, I will refer to this as the sacrifice problem. Although some consequentialists (most notably J.J.C. Smart²) may be willing to embrace the apparent *reductio*, thereby denying there is a problem, most consequentialists have seen it as a problem, and have been keen to avoid it.³

On the face of it, Brad Hooker's distribution-sensitive rule-consequentialism, defended in his *Ideal Code, Real World*, would seem to have the apparatus necessary to avoid the sacrifice problem. Life will go better if people don't steal from each other, and if they refrain from killing innocent people. Therefore, Hooker's rule-consequentialism will protect people from such behavior by conferring to them the necessary rights.

I will demonstrate, however, that Hooker's rule-consequentialism may still require the sacrifice of innocent people in certain situations, and therefore remains prone to the sacrifice problem.

Hooker defends the following principle:

¹J.J.C. Smart, "An Outline of a System of Utilitarian Ethics," in J.J.C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), chap. 10, p. 69.

²Smart, "Outline," pp. 67-73.

³See Bernard Williams, *Morality* (Cambridge: Cambridge University Press, 1972), pp. 94-95.

An act is wrong if and only if it is forbidden by the code of rules whose internalization by the overwhelming majority of everyone everywhere in each new generation has maximum expected value in terms of well-being (with some priority to the worst off).⁴

Generally, it is thought that consequentialist theories are prone to the sacrifice problem because of their “indifference to distribution.”⁵ Hooker’s *Ideal Code*, however, is not indifferent to distribution. Rather, it gives priority to the worst off, and to that extent is distribution-sensitive.

It must be recognized, however, that it is not necessarily only the rights of the worst off that need protection. Thus, giving priority to the worst off may not be sufficient to avoid the sacrifice problem.

G.A. Cohen considers a situation in which eye transplants are easy and safe, and the state therefore “conscribe[s] potential eye donors into a lottery whose losers must yield an eye to beneficiaries who would otherwise be not one-eyed but blind.”⁶

It is not clear what we should be giving weight to if we want to avoid a moral theory that will advocate such a lottery.⁷ Giving greater weight to the worst off, for example, would give us a theory that would *require* the implementation of this lottery, for who is worse off, in terms of eyes, than the blind?

Similarly, if we give weight to equality, this will support the case for the eye lottery, rather than count against it. In addition, we will also be faced with the levelling-down objection, such that there would be a case for removing the eyes of the sighted, even when transplants are not possible.⁸

Of course, it is possible that the consequentialist may not be worried by the eye lottery. Derek Parfit, for example, claims that we are mistaken if we consider a distribution of eyes horrific, and believes that a non-voluntary redistribution of eyes can be justified.⁹ Although more tentative on this issue, Hooker too has suggested that he *might* be willing to accept this conclusion, and suggests that a distribution of eyes is only

⁴Brad Hooker, *Ideal Code, Real World* (Oxford: Clarendon Press, 2000), p. 32.

⁵See William H. Shaw, *Contemporary Ethics, Taking Account of Utilitarianism* (Oxford: Blackwell Publishers, 1999), p. 129.

⁶G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), p. 70. See also Robert Nozick, *Anarchy, State and Utopia* (Oxford: Basil Blackwell, 1974), p. 206.

⁷Of course, the consequentialist may not want to avoid the lottery. This option will be considered later in the essay.

⁸Derek Parfit, “Equality and Priority,” in Andrew Mason (ed.), *Ideals of Equality* (Oxford: Blackwell Publishers, 1998), chap. 1, p. 10. See also Hooker, *Ideal Code, Real World*, p. 45.

⁹Parfit, “Equality and Priority,” p. 9.

different in degree from a distribution of wealth.¹⁰

Even if we do not agree with Parfit here, this raises an important point. The consequentialist does not need to avoid sacrifices completely in order to avoid the objection. Those who are not willing to accept the conclusions of some forms of consequentialism¹¹ may nevertheless embrace those that I have suggested will follow from Hooker's theory. So the objection is not simply that consequentialism requires us to sacrifice the innocent. Rather, the objection is that consequentialism requires the *unacceptable* sacrifice of the innocent.

In response to this fact, I add the following two comments. First, I do not intend my arguments here to be an out-and-out refutation of rule-consequentialism. I intend only to highlight some of the implications of rule-consequentialism, which many consider to be more attractive and palatable than other forms of consequentialism, and to urge people to reconsider whether or not they still consider it an acceptable moral theory.

Second, if one is not put off by the eye lottery, I can raise the stakes. Suppose we could prolong the lives of many who would otherwise die young, having never had the chance to fulfill any of their ambitions, by taking essential resources (hearts, livers, kidneys) from people who, although healthy, had already lived a relatively long and fulfilled life. It seems that the distribution-sensitive rule-consequentialist will be committed to the organ lottery as well as to the eye lottery—even though the redistribution will cost the “donor” his life.¹²

Brad Hooker argues that the best (and perhaps the only) response to these arguments would be to compare two rules.¹³ On the one hand, we consider a rule that grants people rights that protect their body parts and therefore make a redistribution of body parts impermissible. On the other hand, we consider a rule that requires the distribution of body parts, with a lottery to choose the donors.

The question then is, which of these rules would actually have the best (weighted) consequences? On the basis of the arguments presented above, it may seem that this cost-benefit analysis will clearly favor the first rule. Eyes, and other body parts, would go to those people who really need them. People who would otherwise live half-lives or quarter-lives¹⁴ might be able to live something closer to a full life, and the blind would be given sight. There would also be the additional “advantage that

¹⁰Brad Hooker, personal correspondence.

¹¹See Williams, *Morality*, pp. 94-95, and Smart, “Outline,” pp. 67-73.

¹²Nozick, *Anarchy, State and Utopia*, p. 206.

¹³Brad Hooker, personal correspondence.

¹⁴I take these phrases from Ted Honderich, *After the Terror* (Edinburgh: Edinburgh University Press, 2002), pp. 12 and 16.

people will feel assured that, should they need a body part, there will be one available for them.”¹⁵

However, we must also acknowledge that there would be great costs associated with this rule. And it must be stressed that this cost is not limited to the cost to those who are required to give up various body parts. There is, of course, also the significant unease that healthy people will feel if such rules were introduced, as well as the cost of internalizing these rules.¹⁶

In the light of these considerations, it does seem reasonable to claim that the rule-consequentialist would in fact favor the rule that grants people rights that protect their body parts. We might conclude, therefore, that rule-consequentialism is able to avoid the sacrifice problem.

Nevertheless, I remain unconvinced. First, I am not one hundred percent convinced that this cost-benefit analysis would favor the first rule. That is not to say that I think the cost analysis would favor the second rule. I simply think it is unclear what the result of the cost-benefit analysis would be.

Second, we might want to consider other rules. There might be other ways to redistribute body parts that reduce the amount of unease. Instead of holding a lottery, as in the original suggestion, we might pick out a small group of people and make them the donors, such that the rest of us could feel secure in the knowledge that our organs will not be taken from us. We might “breed” people especially for this purpose.

In the original rule, we had to consider the considerable amount of unease felt by *everyone*. But by picking on a choice few, this unease could be reduced considerably. Of course, the unhappiness of those select few—taken individually—would be much greater than the unease of the others—taken individually—but in terms of aggregate unhappiness and dissatisfaction, this policy may ultimately result in a *reduction* of unhappiness.

In response to this, Hooker can point out that his version of rule-consequentialism is distribution-sensitive and gives weight to the worst off, and this would count against such an unjust policy. This is true, but would these people be the worst off? They may still be better off than the blind and the terminally ill. They may still live relatively full lives—especially if, for example, we had a policy of not taking organs from these donors until after they had reached a certain age. Thus, although the suffering of the donors would be given extra weight, even more weight would have to be given to the well-being of the blind and the sick, and thus the rule-consequentialist might conclude that these policies

¹⁵Brad Hooker, personal correspondence.

¹⁶Again, I owe this point to Brad Hooker.

should be implemented.

I concede that my argument is far from conclusive, but again, at the very least, it seems unclear which way the cost-benefit analysis would go. In addition, this discussion also illustrates a further point: it looks as if there is something wrong with this approach, whichever rule the cost-benefit analysis favors. As Hooker concedes,

the very idea of running a cost-benefit analysis on a rule about taking body parts and redistributing them will strike many people as inherently counter-intuitive, no matter what the outcome of that cost-benefit analysis is.¹⁷

Consequently, even if the cost-benefit analysis does favor the rule granting rights to protect people from eye lotteries, those who find Hooker's arguments appealing may nevertheless find that they have a conflict between two intuitions.

On the one hand, they will have the intuition that rule-consequentialism "does a better job than its rivals of matching and tying together our moral convictions, as well as offering us help with our moral disagreements and uncertainties."¹⁸ On the other hand, though, they may also have the intuition that we should not have to do a cost-benefit analysis in order to conclude that the redistribution of organs and the breeding of donors are not permissible.¹⁹

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¹⁷Brad Hooker, personal correspondence.

¹⁸Hooker, *Ideal Code, Real World*, p. 101.

¹⁹I owe thanks to Brad Hooker for reading and commenting on previous drafts of this paper. The latter part of the paper in particular benefited immeasurably from his comments and contribution.

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