

**AGEISM:  
A CONCEPTUAL REFORMULATION AND CRITIQUE OF  
AGEIST PRACTICES**

**AGEISM**  
**A CONCEPTUAL REFORMULATION**  
**AND**  
**CRITIQUE OF AGEIST PRACTICES**  
**IN PERSON-CARE AND HEALTH-CARE**

By

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## ABSTRACT

The term, Ageism, was coined by Robert Butler, M.D., in 1968 and was defined as discrimination against the elderly. This definition has been widely accepted. I argue in this thesis that this definition is, itself, ageist and furthermore that it is a definition which patronizes the elderly and promotes victim-blaming. In addition to reformulating the concept in a universal way, this thesis distinguishes direct, chronological ageism and indirect functional, aesthetic, and symbolic ageism. These forms of ageism are shown to be morally inappropriate at the level of agent action. Chronological ageism is examined at the level of social policy and it is argued that ageist policies which cause suffering are unjust and immoral. Finally, a recent argument by Norman Daniels for an age criterion in the allocation of scarce or expensive health-care benefits is analyzed in depth and criticized from several perspectives.

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## INTRODUCTION

The term 'ageism' was coined by Robert Butler in 1968. It was intended to purchase indignation in the moral marketplace at the same rate as its successfully minted predecessors, 'racism' and 'sexism'. The new currency, it was thought, would buy emancipation for the elderly in the same way that the proscriptive power of the concepts 'racism' and 'sexism' had purchased equality for non-whites and non-men. The non-young, too, would be liberated as 'ageism' began to rattle consciences and pockets of discrimination. So it was fervently hoped by those pioneering in the field of gerontology. The concept of ageism seemed to share with racism and sexism a built-in contempt for discrimination on the basis of an irrelevant characteristic, a contempt which would yield a practical syllogism denouncing particular discriminatory practises against the elderly:

1. It is wrong to discriminate on the basis of irrelevant group characteristics.
2. In this context, age is an irrelevant characteristic.
3. Therefore it is wrong to use age as a criterion for discrimination in this context.

Butler's characterization of ageism exploited its similarity to racism and sexism:

Ageism can be seen as a process of systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this with skin color and gender. Old people are categorized as senile, rigid in thought and manner, old-fashioned in morality and skills...Ageism allows the younger generations to see older people as different from themselves; thus they subtly cease to identify with their elders as human beings.<sup>1</sup>

Despite a moral marketing approach that promoted ageism as the new sin, it has failed to achieve the denunciatory value that has been accorded racism and sexism. It may have made some small ripple in the ethical economy. There is some evidence to suggest that the overtly 'ageist' attitudes detected in earlier studies by gerontologists have been replaced by softer forms of discrimination. Jack Botwinick, in a survey of recent studies of attitudes towards the elderly, reports:

Although little blatant or apparent age bias tends to be seen in these studies, subtle ones are apparent. In one study, when the old failed, failure was attributed to inability; when the young failed, failure was attributed to lack of effort. In another study, when failure of the young was seen due to a lack of ability, failure of the old was seen as due to age. In another study, age was the reason for the failure of the old, while at the same time age was seen as the reason for success of the young.<sup>2</sup>

Ironically, while 'ageist' expression is said to have become more covert in the popular arena suggesting some success in marketing it as a new sin, it is

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<sup>1</sup> Robert Butler, M.D., Why Survive Being Old in America, (Harper & Row, publishers, 1975), p. 12

<sup>2</sup> Jack Botwinick, Aging and Behavior (Springer Publishing Company, New York, 1984), p. 33

flourishing in what should be the more reflective circles of academic thought, specifically in bioethics. According to Michael Lockwood, age is an appropriate criterion in allocating scarce medical resources and 'ageism' in this context is laudatory - we fail to be 'ageist' when we ought to be:

For if, as I have been arguing, the fair innings argument is sound, then one ought, in the name of fairness, to prefer a younger over an older patient, for life-saving treatment, even if the post-treatment life-expectancy of the younger patient is no greater than that of the older patient. As I now see it, what is objectionable, here, about unconstrained QALY maximization, is not that it involves discriminating on the basis of age, but, on the contrary, that it fails to take age into account in circumstances where, in fairness, it ought to do so. It fails to be ageist when it should be, rather than being ageist when it should not.<sup>3</sup>

In suggesting that ageism can be fair, Lockwood claims to have disarmed the concept of any proscriptive force - a force which is inherent in the concepts of racism and sexism. Ageism, it would seem, is an ambiguous concept in a way which racism and sexism are not and attitudes towards ageism are ambivalent and lacking in any resounding consensus that it is a moral evil.

Recent arguments in bioethics, epitomized in the works of two influential philosophers, Daniel Callahan and Norman Daniels, claim that age-discrimination in the allocation of scarce/expensive medical technology is morally justifiable. Callahan contends that an age criterion would serve the

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<sup>3</sup> Michael Lockwood, "Quality of Life and Resource Allocation", Philosophy and Medical Welfare (Royal Institute of Philosophy, Lecture Series 23), supplement to Philosophy (Cambridge University Press, 1988), pp. 53,54.

good of the community and the good of the elderly themselves. Daniels argues, largely from a Rawlsian perspective, that prudent deliberators, behind a veil of ignorance, considering intra-personal allocation throughout the stages of their lives, would assent to an age criterion; such a criterion would, therefore, be just. Given that no-one in their right, moral mind in contemporary Western society would argue for the justification of racial or gender criteria in the allocation of scarce resources and given that ageism, like speciesism, was intended to draw proscriptive force from an analogy to racism and sexism, one wonders what's gone wrong.

It is the contention of this thesis that the descriptive content and proscriptive force of ageism cannot be parasitic upon its 'parent' concepts, racism and sexism. Left to feed upon racism and sexism for its survival, it will gradually become a thin concept, merely proscribing gratuitous age discrimination. The moral integrity of ageism rests on finding it a unique identity with its own proscriptive force.

In chapter I of this thesis I will analyze the concept of ageism, as it is commonly used by gerontologists. I will argue that the concept, as it is ordinarily defined, is a counterfeit moral currency and that its coining, though well-intentioned, has been counter-productive as a means to discredit prejudicial attitudes and actions towards elderly persons. The misconceived marketing of a concept intended to morally mimic the concepts of racism and sexism is, I

shall argue, more likely to enhance the very attitudes and practises that it was contrived to discourage.

In chapter II, I will attempt to reformulate the concept of ageism and show that its proscriptive force is not parasitic upon the notion of inequality that is usually appealed to in condemnation of racism and sexism. To this end, I will distinguish four types of ageism - direct, chronological ageism; indirect functional, aesthetic and symbolic ageism. Practises reflecting these types of ageism, it will be argued, fail to be morally appropriate in a variety of ways. Bernard Williams has characterized the moral error of racism and sexism as a failure to understand the "useful tautology" that all human beings are human beings.<sup>4</sup> The four forms of ageism will be shown to share with racism and sexism nothing more specific than this very general failure in moral perception.

In Chapter III, a distinction between comparative and noncomparative injustice drawn by Joel Feinberg will be elaborated upon in order to argue that ageist practises exemplify both of these kinds of injustice and examples will be provided to show how victims of ageism suffer multiple injustice.

In Chapter IV, the issue of direct, chronological ageism in health care is examined with reference to the coherence of an age criterion as a means to achieving savings in health care systems. In addition, a penetrating analysis

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<sup>4</sup> Bernard Williams, "The Idea of Equality", Problems of the Self, (Cambridge University Press, Cambridge, 1973).

will be made of Norman Daniels' argument for the justice of an age-criterion in access to life-extending technology.

## CHAPTER I: AGEISM - REFLECTIONS ON THE CONCEPT

### 1. DESCRIPTIVE PROBLEMS

#### 1.1 Avoiding 'Ageism'

That ageism lacks the conceptual clarity of racism and sexism is suggested by the fact that, in the literature surveyed for this thesis, the term is, by and large, avoided. When it is mentioned, it is frequently placed in quotation marks (Prado, Levin, Kilner). In most articles dealing with bioethics, the term 'age discrimination' is used instead. Ageism appears to be a concept that is ubiquitously used only in gerontological literature.

#### 1.2 Who are the victims? Restricted Ageism

One of the problems with this concept is that it is almost always used to identify a kind of discrimination that would have been better termed 'elderism', or 'gerontism'. Robert Butler, the gerontologist who introduced the concept of ageism, characterized the term in such a way that it was applicable only to attitudes and practises towards the elderly:

"Ageism" is a profound psychosocial disorder characterized by institutionalized and individual prejudice against the elderly, stereotyping, myth-making, distaste, and/or avoidance...Ageism, like racism and sexism, is a way of pigeonholing people rather

than viewing them as individuals with unique ways of living their lives.<sup>5</sup>

This definition of ageism was used to develop the Fraboni Scale of Ageism which attempts to measure antipathetic talk about, avoidance of, and discrimination against, the elderly.<sup>6</sup> Such a definitional focus upon the elderly is ubiquitous in gerontological literature - the title of a recent book says it all: Ageism: Prejudice and Discrimination Against the Elderly<sup>7</sup>. In another recent text ageism is defined as, "aversion, hatred and prejudice toward the aged and their manifestations in the form of discrimination on the basis of age"<sup>8</sup>. This restricted definition has been accepted by at least one philosopher: "Along with racism and sexism we can count "ageism", a prejudicial attitude toward those over sixty or so that distances them from many aspects of our form of life"<sup>9</sup>. If 'age', like 'race' or 'gender', is being picked out as a morally irrelevant

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<sup>5</sup> Robert Butler, "Thoughts on Aging", American Journal of Psychiatry, 135, July, 1978 supplement, p. 14.

<sup>6</sup> M. Fraboni, R. Saltstone, S. Hughes, "The Fraboni Scale of Ageism (FSA): An Attempt at a More Precise Measure of Ageism", Canadian Journal on Aging, Vol. 9, No. 1, 1990, pp. 56-66.

<sup>7</sup> Jack Levin, William Levin, Ageism: Prejudice and Discrimination Against the Elderly, (Wadsworth Publishing Company, California, 1980).

<sup>8</sup> George Barow, Patricia Smith, Aging, Ageism and Society, (West Publishing Company, Minnesota, 1979), p. 7.

<sup>9</sup> C.G. Prado, Rethinking How We Age, (Greenwood Press, Westport, Connecticut, 1986), p. 50



characteristic, then to narrow the concept to 'old-age' seems arbitrary indeed. It is akin to defining racism as discrimination against Blacks. Ironically, such a definition has echoes of racism in that exclusionary concern is being accorded to Blacks without reference to other races that suffer discrimination. Similarly I contend that a definition of ageism that restricts its applicability to issues involving old-age, is itself an 'ageist' definition. It blatantly ignores many other people who may be being discriminated against according to the same criterion - their age. Why should an immature eighteen year old be allowed to vote, or drink when a mature seventeen year old cannot? Why should a foolhardy sixteen year-old be granted a driver's license and a responsible fifteen year-old be denied access to one? Why are middle-aged people expected to be productive and conservative? We live in a society that has endorsed age-stratification as something meaningful. Shakespeare's descriptive account of life stages, the "seven ages" captures, in literary form, our propensity to demarcate stages of life from the infant's "mewling and puking", to young romance "Sighing like a furnace, with a woful ballad", to middle-aged, bulging conservatism, "In fair round belly with good capon lin'd, With eyes severe and beard of formal cut", through to the shrinking form and shrivelling voice of old age towards our final demise "Sans teeth, sans eyes, sans taste, sans everything". The descriptive slips easily into the normative and we find different norms and expectations for different stages of life:

...societies arrange themselves into a hierarchy of socially defined age grades or strata complete with obligations and prerogatives assigned to members as they move from one stratum to the next. As such, societies intrinsically involve structured inequalities; ...Transitions between strata are one-way, may vary in timing, and may involve marked discontinuities in expected behavior.<sup>10</sup>

Erik Erikson formulated life-stage norms that epitomize psychological ideals in ego development. According to Erikson, the developmental ideal of early adulthood is "intimacy" - close personal relationships; of middle adulthood, "generativity" - the ability to support others and to contribute to society; of late adulthood, "ego integrity" - a detached acceptance of one's life as meaningful, or "wisdom" - "an informed and detached concern with life itself in the face of death itself"<sup>11</sup>.

Given the liberal ideals of individualism and autonomy that reign in modern, Western society, one can expect a certain tension between the expression of individuality and the suppression of it implied by stage norms and expectations. No doubt many people, of various age groups, feel stigmatized and, perhaps, victimized by such pressures to conform - to wear the social uniform of their age stage. The group comprising the elderly may be suffering

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<sup>10</sup> J. Hendricks, C. Hendricks, Aging in Mass Society: Myths and Realities, (Little, Brown and Company, Toronto, 1986), p. 95.

<sup>11</sup> Daniel Callahan, Setting Limits: Medical Goals in an Aging Society, (Simon & Schuster Inc., New York, 1987), p. 41. See also, Jack Botwinick, op. cit., pp. 145-147 and Robert Atchley, Social Forces and Aging: An Introduction to Social Gerontology, (Wadsworth Publishing Company, California, 1985), pp. 99-100.

this stigmatization and victimization more than other age groups, but that possibility does not preclude an obligation, on the part of gerontologists and ethicists, to examine the issue of age discrimination in a more holistic manner and to evaluate its effect upon other age groups. Surely the elderly are being given 'preferential treatment' in this regard and an analogy can be seen in the context of reverse discrimination in which it has been observed that just recompense to Blacks or to women in the form of affirmative action raises the question, "Why do wrongs of this particular group and not those of others deserve recompense?" Glenn Loury remarks that this can be "a poisonous question for the politics of a pluralistic society":

But perhaps most important, the public discourse around racial preference inevitably leads to comparisons among the sufferings of different groups - an exercise in what one might call "comparative victimology". Was the anti-Asian sentiment in the western states culminating in the Japanese interments during World War II "worse" than the discrimination against blacks? Were the restrictions and attendant poverty faced by Irish immigrants to Northeast cities a century ago "worse" than those confronting black migrants to those same cities some decades later? And ultimately, was the Holocaust a more profound evil than chattel slavery? <sup>12</sup>

Loury's thesis is that the rationale for affirmative action should be goal directed or teleological, rather than justice-based or deontological. Ageism is an issue

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<sup>12</sup> Glenn Loury, "Why Should We Care about Group Inequality", Equal Opportunity, edited by E. Paul, F. Miller Jr., J. Paul, J. Ahrens, (Basil Blackwell Inc., Oxford, 1987), pp. 260-261.

that has to do with injustice and I can find no just rationale for an a priori exclusion of groups other than the elderly in the formulation of the concept.

### 1.3 The Elderly as Victims - Restricted, Qualitative Ageism

The previous discussion elicits the question of a possible equivocation in the use of the term 'age'. My criticism of the definition of ageism in the last section rested on a characterization of age as a quantitative device, a measurement of years lived and its use to stratify society into various age groups. In that sense, age is a characteristic which is ascribed to everyone and it would be arbitrary and unfair to append the 'ism' without giving ageism a global application. However, the concept of ageism developed by Robert Butler and promulgated by others would be consistent with a definition of age which characterizes it in a qualitative way - "advanced years; old age: *His eyes were dim with age*"<sup>13</sup>. The adjective 'aged' obviously relies on this qualitative definition of age. There is no analogous quantitative/qualitative equivocation in the definitions of race and sex which would render the corresponding concepts of racism and sexism ambiguous in the same way that ageism is. Race and sex are qualitative attributions. If Butler is correct and the term ageism is based on, and confined to, a qualitative understanding of age, it might seem

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<sup>13</sup> The Random House Dictionary of the English Language, Second Edition - Unabridged, 1987.

that ageism, because it applies to discrimination against a particular group who share the quality of 'being old', is on the same conceptual footing as racism and sexism. However, this is not true. Everyone has a race or sex, and the concepts leave open the possibility that a white male, under admittedly extraordinary circumstances, could be the victim of racism and sexism. In contrast, age, in its qualitative sense, denoting old-age, cannot be attributed to everyone and a thirty year-old could not be a victim of ageism so defined. Used in this sense ageism is a much narrower concept than are either racism or sexism and it raises the question of why old-age has been picked out as worthy of a special 'ism'. The reason is obvious. It assumes that the elderly are the victims of widespread, pernicious discrimination akin to the treatment received by Blacks. It is no coincidence that the term ageism was formulated by Robert Butler in Washington in 1968, "a year of nation-wide racial violence that reached a crescendo when troops in battle gear patrolled the Capitol building itself" <sup>14</sup>. If ageism involves discrimination against a restricted group, the elderly, as it does in its qualitative definition and if the concept of ageism was derived from a comparison of the discriminatory treatment of the elderly and of Blacks, then one wonders why a corresponding analogue "Black-ism"

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<sup>14</sup> G.J. Gruman, "Cultural Origins of Present-Day "Age-ism": The Modernization of the Life Cycle", Aging and the Elderly - Humanistic Perspectives in Gerontology, S. Spicker, K. Woodward, D. Van Tassel, Editors, (Humanities Press, Inc., New Jersey, 1978), p. 361.

was never coined. I believe that there are good moral reasons why such a term would be unacceptable, reasons that also militate against the qualitative concept of Ageism. These reasons will be explored by borrowing and enlarging upon a distinction found in the social sciences between an exceptionalist (sometimes called "separatist" <sup>15</sup>) and a universalist approach to social problems.

#### 1.4 Restricted, Qualitative Ageism - An Exceptionalist Concept

W. Ryan identified a four-stage, exceptionalist approach to social problems which involved "blaming the victim":

First, identify a social problem. Second, study those affected by the problem and discover in what ways they are different from the rest of us ... Third, define the differences as the cause of the social problem itself. Finally, of course, assign a government bureaucrat to invent a humanitarian action program to correct the differences. <sup>16</sup>

Ryan claims that exceptionalist approaches tunnel social vision in such a way that a wider gaze of social problems and their possible resolutions is prevented. There is a certain symmetry between Ryan's characterization of a four-stage exceptionalist approach to social problems and the creation of terms like ageism or 'Blackism'. Exceptionalist approaches to social problems and moral

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<sup>15</sup> C. Estes, Public Policy and Aging in the 1980's, The United Presbyterian Church, Georgia, 1981, pp. 23-38.

<sup>16</sup> William Ryan, Blaming the Victim, (Random House, New York, 1972), p.8.

problems are similar in that both movements identify a problem and then attempt to resolve the problem in terms of the problem. The problem is framed and the solution to it is constructed from within that frame. If, in discerning the problems faced by Blacks in America, activists had coined the term 'Blackism' and sought to expose the error of society's ways in its treatment of Blacks and to solve the problem in those terms, then racists would not have been challenged to re-examine their attitudes towards Jews, Asians, East Indians or aboriginal people. That is, such an approach encourages moral parsimony when looked at from the perspective of moral agency. It's a bandage, rather than a surgical, approach to the issue of arbitrary discrimination. Discrimination against Blacks is a deep and festering sore, but it is symptomatic of a much more profound moral disease.

It is possible that gerontologists, by coining the term ageism in its exceptionalist sense, have opened the way for victim blaming of the elderly in ways not yet realized. Two gerontologists have already noted that an exceptionalist approach to the problems of old-age has generated some victim-blaming in gerontological theories and findings:

...the literature of gerontology has blamed the aged in much the same way that we have blamed the poor for their condition. The research in the physiology and psychology of aging has, by choosing to focus on the characteristics of the aged, contributed to

this tendency. Similarly, the theories and findings of social gerontology have tended to blame the aged.<sup>17</sup>

One of the gerontological theories which Levin & Levin describe as illustrative of the victim-blaming that is a concomitant of an exceptionalist approach in the social sciences is the Disengagement Theory:

The society and the individual prepare in advance for the ultimate 'disengagement' of incurable, incapacitating disease and death by an inevitable, gradual and mutually satisfying process of disengagement from society.<sup>18</sup>

The Disengagement Theory has been used to justify mandatory retirement:

"Disengagement theory argued that society expected individuals to give up the work role, and that they did so voluntarily and with relief."<sup>19</sup> Levin and Levin characterize it more fully:

This process [of disengagement] is said to be normal and functional for both the society and the individual. For example, the society, presumably to avoid the disruption of having its fully engaged members dying or becoming inefficient "on the job", retires them, and the retired individual, having been freed of an encumbering tie, is now free to complete disengagement in other areas of life and to move towards death.<sup>20</sup>

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<sup>17</sup> J. Levin, W. Levin, op. cit., p. 64

<sup>18</sup> Arnold Rose, quoted by Levin & Levin, op. cit., p. 44

<sup>19</sup> Barry D. McPherson, Aging as a Social Process, (Butterworth & Company, Toronto, 1983), p. 379.

<sup>20</sup> Levin & Levin, op. cit., p. 44/45.



Such rationalization for ignoring individual wishes to remain in the work force echoes of the rape rationales that the victim enjoyed it, or needed it, or had it coming. Analogously, I think, an exceptionalist conception of ageism has provoked a move in bioethics to "disengage" the elderly in a more permanent fashion than is effected by mandatory retirement. The fair-innings argument is an argument which defends an age criterion in the allocation of scarce/expensive medical resources on the basis that old people have had a 'fair-innings'<sup>21</sup>, they've lived long enough and "have a duty to die and get out of the way"<sup>22</sup> so that younger people can thrive. Daniel Callahan's thesis that "society would be justified in setting an age limit on the public provision of expensive, life-extending, curative health care"<sup>23</sup> also invokes the fair innings argument. In other words, according to this view, one can discriminate against the elderly with impunity in allocating expensive life-saving technology because,

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<sup>21</sup> For a characterization of the argument and divided opinions regarding it, see John Harris, "More and Better Justice", Philosophy and Medical Welfare, Royal Institute of Philosophy, (Lecture Series 23), supplement to Philosophy, (Cambridge University Press, 1988, pp.75-96) and Michael Lockwood, "Quality of Life and Resource Allocation", *ibid*, pp. 33-56

<sup>22</sup> Governor Richard D. Lamm, quoted in The Hastings Center Report, October 1984.

<sup>23</sup> Daniel Callahan, What Kind of Life - The Limits of Medical Progress, (Simon & Schuster, New York, 1988), p. 153

when considered in the frame of intergenerational justice<sup>24</sup>, old age is a morally relevant factor. The concept of intergenerational justice is a divisive concept requiring a fractured, rather than a cohesive, understanding of existing members of society. It is a concept consistent with dividing a whole life into age stages and with dividing a whole society into age-defined strata. Youth, middle-age and old-age are seen as separable and contentious segments of a whole life; the young, the middle-aged and the elderly are seen as separable and contentious segments of a whole society. There is no Platonic vision of justice supervening upon the whole after this tripartite division. Justice is spelled out in terms of what one group owes another, not in terms of the harmony of the whole. There is no grand metaphysical and social ideology contained in accounts of the age-stratification of society and the age-stage division of individuals. There is no deep analysis of the human soul and corresponding account of society contained within the concept of intergenerational justice. There is no noble lie, just the ignoble fiction that age is a meaningful way of dividing society and lives. I will have much more to say about this issue in the last chapter of this thesis.

To say that someone is 'elderly' is to say something either chronological or biological - in either case it is merely to describe the condition of an

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<sup>24</sup> In a later part of this paper I will elaborate upon the equivocation in the term 'intergenerational justice'. For the time being, I use it to refer to justice between contemporary age-groups.

organism in time. It's body/clock talk - a language that this thesis will argue is not the language appropriate to ethics. Gerontologists, in conceptualizing ageism as discrimination against the elderly, have unwittingly disseminated the ignoble lie that body/clock talk is morally meaningful. The coining of the term ageism led to a flurry of activity to determine why the elderly were being discriminated against. It was predictable that formulation and ethical analysis of the problem in terms of the young vs. the elderly, or intergenerational equity, would engender, from some quarters, the response that being old is a morally relevant characteristic in the context of scarce resource allocation. The concept of ageism in its restricted use has promoted a divisive view of society and encouraged age-group antagonism. Rather than promoting analysis of the moral relevance of age, per se, this focus on discrimination against the elderly has prompted analysis in terms of age-group conflict. Rather than addressing problems from the perspective of social solidarity, the qualitative diagnosis of ageism has allowed for isolation of the specimen, intergenerational equity - a specimen that fits easily under the moral microscope:

...while the concept of intergenerational equity is seemingly neutral and possesses an intuitive appeal (who can be against fairness?), its application, whether by design or inadvertence, carries with it a very pessimistic view about the implications of an aging society, which leads to particular policy goals and prescriptions.<sup>25</sup>

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<sup>25</sup> E. Kingston, B.A. Hirshorn, J. Cornman, Ties That Bind: The Interdependence of Generations in an Aging Society, Seven Locks Press, Cabin John, Maryland, 1986. Quoted by, Meredith Minkler, "'Generational Equity' and The New Victim Blaming: An

Careful scrutiny of ageism, qualitatively defined, permits the view that, what appeared before as unfair discrimination can be seen to be, when viewed close-up, as a kind of justice. While no morally-minded person would countenance a colour restriction on access to life-saving technology, the pathologist's report from the ethics lab indicates an age restriction would be a just response to intergenerational antagonism. Thus, ageism, in matters of health care allocation, can be pronounced benign; perhaps the imagined illness of morally eccentric and hypochondriac gerontologists. It does not carry within itself the morally malignant cells contained in racism and sexism... or, so the story goes from the moral laboratory:

A final set of arguments supporting rationing of medical services based on age appeals to the principle of equality. The thrust of this approach is that ageism is not objectionable in the way it is usually thought to be. Unlike sexism or racism, differential treatment by age is compatible with treating individuals equally.

<sup>26</sup>

In addition to framing the problem and contracting it, a qualitative understanding of ageism, in its focus upon inter-generational conflict, diverts attention from matters pertaining to intra-generational justice:

Finally, the concept of intergenerational equity is misleading as a basis for policy, because it diverts attention from the extent of

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Emerging Public Policy Issue", International Journal of Health Services, 16(4), 1986, p. 549.

<sup>26</sup> Nancy Jecker, Robert Pearlman, "Ethical Constraints on Rationing Medical Care by Age", Journal of the American Geriatrics Society, 37, 1989, p. 1071.

inequalities *within* age groups and hence the case for *intragenerational* equity.<sup>27</sup>

The inequalities that exist within particular groups and which permeate society as whole may require a more whole-scale approach than is achieved by focussing upon particular symptoms of discrimination. The problems of poor Blacks raises more than the problem of how discrimination has contributed to their poverty; it also raises the question of why poverty is pervasive throughout society and why we condone the dramatically disproportionate standard of living between rich and poor. The special problems faced by women as they age in our society are eclipsed by a concept of ageism that confines itself to discrimination against 'the elderly'. The exceptionalist focus of ageism invites tunnel vision:

To describe the axis upon which equity is to be judged is to circumscribe the major options available in rendering justice. The contemporary preoccupation with... intergenerational equity blinds us to inequities within age groups and throughout society.<sup>28</sup>

So far in this section I have argued that conceiving ageism as discrimination towards the elderly is as appropriate as conceiving racism as discrimination towards the Blacks. Had the latter course been taken, the concept coined would have been 'Blackism'. This kind of exceptionalist

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<sup>27</sup> Alan Walker, "The Economic 'Burden' of Ageing and the Prospect of Intergenerational Conflict", Ageing and Society, 10, 1990, p. 389.

<sup>28</sup> R.H. Binstock, "The Oldest old: A fresh perspective or compassionate ageism revisited?", Milbank Memorial Fund Quarterly, 63(2), 1983, pp. 437/8

approach, it has been argued, promotes a moral parsimony that diverts ethical energy from other deserving victims of discrimination and uses the resources found in the problem to reconstruct a resolution. In its stinginess, it encourages victim-blaming and an impoverished assessment of the inequities within the group it poorly sponsors and of the problems faced by other age groups.

I now wish to maintain that there is a sense in which Blacks would find the term 'Blackism' patronizing. A parallel suggests itself in the area of sexism. "Blonde Jokes" have become the in-thing in 'humour'. No matter how offensive these jokes are in terms of being overtly sexist, it would significantly offend blonde women were some well-meaning moralists to coin the term 'blondism' and were a bunch of social fanatics to set out to study the problems of blond women. The offensiveness of such moral fanaticism is that it condescends too much and its posture is overly patronizing. It stoops too low, to conquer the ridiculous. Such a strategy highlights (no pun intended) the ridiculous and distracts attention from the roots (pun intended) of the matter. What is seriously wrong with these jokes is that they are based on and promote a pejorative view of women. I think there is a valid sense in which 'the elderly', too, are being patronized by a concept of ageism that stoops to conquer 'their' problems as if these problems were peculiar to 'them' and not part of a more universal problem of categorizing human beings in ways that are irrelevant to their humanity.

### 1.5 Ageism and Feminism?

I have argued that ageism, qualitatively defined, is unlike the concepts of racism and sexism from which it was derived and that this dissimilarity carries moral implications that render the concept of dubious value. It is a counterfeit concept whose cash value may purchase only moral parsimony, victim-blaming and patronization. Since it fails to mimic sexism in that the latter picks out a universal ascription, gender, as morally irrelevant whereas ageism focuses on a characteristic of a particular group, one might wonder if ageism is more akin to feminism. Clearly this is not the case. While both concepts might be seen as doctrines advocating equality for particular groups - women and the elderly, a feminist is a person who opposes discrimination against women, whereas an ageist, according to the qualitative definition, is a person who promotes discrimination against the elderly.

## 2. PROSCRIPTIVE PROBLEMS

Moral terms carry either prescriptive or proscriptive force - they recommend or they condemn certain attitudes, actions, practices, etc. For example, the moral concept, benevolence is prescriptive, while the concept, murder, is proscriptive. Ageism is a proscriptive moral concept. It condemns, in its qualitative use, discrimination against the elderly. It gathers, what I shall call *prima facie* force, from its perceived relationship to its parent concepts, racism

and sexism. We have been so sensitized to the inequities and iniquities of racism and sexism that we are prima facie likely to let a new concept like ageism blow away our moral minds, knock us off our moral feet and send us scrambling for deliverance from our sins. Off to the confession booths we go: "I am guilty of associating old age with death"; "I am guilty of thinking the elderly are lonely"; "I am guilty of feeling sorry for them"; "I hate wrinkles". "I do not want to grow old." "I don't want to be like them." But then some gentle voice on the other side of the curtain in our brains says - "so what...you're only human and humans are mortal and mortality is not something humans love." To which we respond, "But I'm an Ageist, forgive me for my sins!". And then comes the telling question from the moral priesthood - "Tell me how you treat old people?". By the time this internal conversation has elapsed, the concept of ageism is likely to have lost its prima facie force and the 'sinner' to have regained a modicum of her former moral stature without any divine deliverance. The chances are that, although she's not quite sure who 'the elderly' are, she's pretty sure that she has treated them properly as individuals and that her fears of her own aging, or her dislike of old age per se, have nothing to do with how she treats other people. She is now ready to face the concept head-on and analyze the authority of its force.



## 2.1 Who Are "The Elderly", "The Old", "The Aged"?

If accused of racism or sexism, the offending moral agent can identify the characteristic, whether it be race or gender that she has used inappropriately as a basis for discrimination. Such is not the case with ageism because the characteristic of 'being old' is not so precise. Does this terminology refer to the group who are 65+, or to those who are functionally old? That is, does it refer to chronological or biological age? This equivocation, in the hands of gerontologists bent on uncovering mass ageism in our society proved fertile indeed. Questionnaires intended to measure attitudes towards and beliefs about 'old people' yield questionably enlightening results when the respondent has in mind one target group - the functionally or frail elderly - and the researcher applies those findings to document 'ageist' attitudes and beliefs about the chronologically old:

Another vague aspect is the interpretation given by participants to the phrase "old people". Perhaps the most common meaning of "old" both as used in everyday language and in biology, involves the concept of deterioration...Until the target group in a respondent's mind is known, it might be thought somewhat premature to jump to conclusions about a stereotype for all people over 65....<sup>29</sup>

This conceptual confusion in terminology such as "the elderly", and "old people" significantly diminishes the strength of an analogy between ageism and racism

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<sup>29</sup> D. Schonfield, "Who is Stereotyping Whom and Why", The Gerontologist, Vol. 19, No. 1, 1979, p. 119.

or sexism. The criterion for membership in the victim-class designated by the first concept is uncertain in a way that membership in the victim classes designated by the latter concepts are not. The "heterogeneity of the elderly" is an incantation chanted repeatedly in the gerontological catechism to curb the tendency of the unenlightened to assume homogeneity amongst the chronologically-defined group 'the elderly'. Textbooks for first-year students in gerontology reiterate the heterogeneity mantra that there are rich, poor, happy, miserable, healthy, sick, active, disabled, lonely, not-lonely elderly persons. Why, if heterogeneity is the key to enlightenment, authorize an 'ism' that is applied, without distinction, to so diverse a group as those over age 65? Who merits the characterization "old", or "elderly", or "aged"? I agree with Victor Marshall: "It is quite ridiculous to talk about "the aged" referring to all people over the age of 65" <sup>30</sup> Now sensitized to the fact that this equivocation undermines the validity of research findings, gerontologists are being more specific in the wording of their questionnaires. The Fraboni Scale of Ageism informs respondents that they are "to consider "elderly" or "old" people to be individuals aged 65 or older" <sup>31</sup>. Surely this is arbitrary and, perhaps, ageist - ageist in the sense that a chronological age group is being stereotyped by an

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<sup>30</sup> Victor Marshall, "The Health of Very Old People as a Concern of their Children", Aging in Canada: Social Perspectives, Victor Marshall, Editor, (Fitzhenry & Whiteside, 1987), p. 477.

<sup>31</sup> M. Fraboni, R. Saltstone, S. Hughes, op.cit., p.60

adjective that fails to characterize many of the members of the statistical group. There is no consensus among the objectified group that they belong in that category. That most people over 65 don't consider themselves 'old', or 'elderly' is surely significant:

...it may be surprising that only 25 percent of the sample aged 70 and over identified themselves as old. Further, the denial of old age was not confined to only those aged 70, but also to those over 80. Of those over 85 years, only 48 percent identified themselves as old, the rest as "middle-aged" or "elderly." <sup>32</sup>

The significance of these surveys is trivialized by the assumption that because most people over the age of 65 do not consider themselves "old" or "elderly", they must be engaging in "denial". Botwinick suggests this in the passage above and cites the work of other gerontologists who concluded that:

"There is substantial literature showing that older persons often deny their own aging; they tend to tenaciously cling to conceptions of themselves as 'middle-aged' or even 'young'...despite...the onset of old age..." <sup>33</sup>

The reason why most people over the age of 65 do not describe themselves with the adjectives 'old', or 'elderly' is probably because there is a radical equivocation in these words - there is no necessary connection between being chronologically old or elderly (65+) and being qualitatively old or elderly (frail).

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<sup>32</sup> Jack Botwinick, Aging and Behavior: A Comprehensive Integration of Research Findings, op. cit., p. 21

<sup>33</sup> G.L. Bultena, E.A. Powers, "Denial of aging: age identification and reference group orientations", Journal of Gerontology, 33, 1978, p. 748. Cited by J. Botwinick, *ibid.*

There is something 'fishy' about looking for negative attitudes towards a group of victims when the majority of members of the supposed group fail to identify themselves with it.

It has been suggested that this phenomenon of denying that one is old is analogous to the phenomenon known as "passing":

Certain minority-group members attempt actively to avoid the consequences of their minority status by passing for members of the majority group or by refusing to accept their status and attempting to maintain positive self-images. For example, light-skinned blacks have passed for whites; Jews have passed for Gentiles by changing their names or giving up religious rituals.<sup>34</sup>

Levin and Levin go on to suggest that "Passing is frequently expressed in the consumption by the aged of products designed to give the appearance of youth or middle-age"<sup>35</sup>. They point to such 'evidence' as the growth in the use of cosmetics, hair-pieces, face-lifts, wigs, weight-control items and fashion-conscious clothing. Does this mean that the elderly, whoever they may be, are supposed to enjoy life 'au naturel' while it's o.k. for the rest of us to paint, pump and preen? If there is something wrong with our propensity to decorate ourselves and to deplore wrinkles and bulges, then it is a symptom of a disease displayed by the majority of the population and not just by the elderly. Why pick on them? It seems to me that most teenagers want to "pass" for 21 and

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<sup>34</sup> Levin & Levin, op. cit., p. 102

<sup>35</sup> *ibid*, p. 104

most people over 30 want to "pass" for someone younger. This kind of "passing" is not the exclusive domain of the elderly. This kind of "passing" is not a feature of a minority group and it is not akin to the kind of "passing" discussed in the literature on racism. When the chronologically old describe themselves as 'young', or 'middle-aged', they are not necessarily trying to 'pass', or engaging in the defense mechanism of denial. I believe they are trying to get the message across to a deaf audience that the process of aging is not a metamorphosis in which at various 'stages' one sheds one's youth and then one's middle-age and then turns into an old person at age 65. Human beings are not house-flies, butterflies, or mosquitoes and personhood does not transmute from caterpillar-person, to pupa-person, to butterfly person. Alterations of the body do not imply similar alterations to the person - the person is his/her past in an intimate synthesis that is underdetermined by a linear understanding of time and a spatial understanding of change. I am my childhood, my youth, my middle-age in a way that can't be described by plotting my life-course on a map that linearizes time. I'm not 'here-now' in a way that is removed from the 'there-then' me of my past. This kind of language will do for my body, but it underdetermines me. I have not accumulated years like baggage, baggage that can be counted to determine that I have 'more' or 'less' than someone else. Nor am I 'middle-aged' in any sense that denies my claims

to being a child, a teenager and a thirty-year-old in a sense which is intimately relevant to who I am now. Personhood cannot be captured in a time-slice:

The abandonment of a distinct past, present and future is a profound step, for the temptation to assume that only the present "really exists" is great. It is usually presumed, without thinking, that the future is as yet unformed and perhaps undetermined; the past has gone, remembered but relinquished. Past and future, one wishes to believe, do not exist. Only one instant of reality seems to occur 'at a time'. The theory of relativity makes nonsense of such notions.<sup>36</sup>

If the concept of ageism is to carry proscriptive moral force there should be a reasonable characterization of the criterion that is appealed to in ageism, such that the victims of ageism can agree that they have been discriminated against with respect to that criterion. Studies indicate that members of the statistical group, consisting of those who are over 65, do not agree that they share the characteristic of 'being old'. If the shared characteristic is simply the statistical fact of 'being over 65+', it is reasonable to ask why such a morally-loaded term should not apply to discrimination against those aged 64, or 59, or 20?

## 2.2 Ageism and Aging

In some of his work Robert Butler collapses the distinction between our attitudes towards our own aging, or towards aging per se, and our attitudes towards elderly people. For example:

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<sup>36</sup> Paul Davies, God and the New Physics, (Simon and Schuster, New York, 1983), p. 124

Much of society's reluctance to deal with old age results from "ageism," a personal and cultural dread that stems from a view of aging that sees only the negative aspects.<sup>37</sup>

If the concept ageism includes, at some level of description, a proscription against preferring youth and disliking the aging process, there is yet another disanalogy between it and the concepts of racism and sexism. There is, included in the latter two concepts, no element that could be described as a process. One doesn't 'race' or 'sex', but one does 'age'. Aging is a universal process - we all suffer it (in the passive sense of suffer, meaning that we don't actually 'do' it). Aging is not a group characteristic, it's a fact of life - all biological life. We can retard it, or hasten it, but we can't eradicate it. In the context of ageism, this reference to attitudes towards aging muddies the conceptual waters still further and one wonders what the connection is between attitudes towards aging and attitudes towards the elderly. Butler appears to infer a necessary causal connection - that if we have negative attitudes towards our own aging, we will have negative attitudes towards the elderly: "One manifestation of society's reluctance to come to terms with aging is its pervasive prejudice against the old."<sup>38</sup> I do not accept that there is any necessary causal relationship between attitudes towards aging and attitudes towards the elderly. Schonfield elaborates:

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<sup>37</sup> Robert Butler, "Thoughts on Aging", op. cit., p. 14

<sup>38</sup> Robert Butler, *ibid*, p. 14

Butler...unites prejudicial attitudes towards the aged, toward old age and toward the aging process...It should be obvious that at least two different attitudes are being combined - attitude toward one's own aging and attitude toward the aged - without any evidence of a positive correlation between them.<sup>39</sup>

Despite any evidence to suggest that those who pluck out their grey hairs are negatively disposed towards elderly people, this imagined positive correlation fired a movement among gerontologists to emphasize the positive aspects of aging - something like an academic equivalent of the "you're not getting older, you're getting better" advertising campaign. There have been some insightful complaints about this positive ideology of aging. While the ideology was intended to balance what was thought to be an overly-negative attitude towards aging and old age and to counteract ageism, the results may have been to foster denial and to insult the elderly by suggesting that old age is o.k. if it's youthful: "The irony of the positive stereotype is that old age is only positive to the extent that it resembles youth" <sup>40</sup>. Ann Davis makes a similar observation under the heading "Aging is Beautiful = Social Scientists Produce Positive Stereotypes":

Others of us on a less mundane plane may simply just wonder if the new "mind game" is not another version of running away from

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<sup>39</sup> David Schonfield, op. cit., p. 271.

<sup>40</sup> I. Connidis, "Life in Older Age: The View from the Top", Aging in Canada: Social Perspectives, V. Marshall, Ed. (Fitzhenry & Whiteside, 1987), 455.



oneself or kidding oneself...we have noted the stereotype of youth and beauty - physical prowess - interestingly the new positive stereotypes of aging and vitality echo this old view; they seem to have merely rephrased the image to admit the elderly.<sup>41</sup>

The "Black is Beautiful" movement did not rely on a banner bearing the portrait of a White in order to raise social consciousness. Needless to say, to assign the term beautiful only to Blacks who look similar to Whites would be as insulting as it is racist. Those who promoted the new ideology of aging did so at the expense of elderly persons who could not exemplify the superficially aesthetic ideals of youth. The campaign ignored them and insulted them and was ageist in a sense to be addressed later in this thesis.

Aging of the body, whether we wish to admit it or not, "by definition, involves the movement of the organism toward death over the course of time"<sup>42</sup>. Why should we like it? Why should we have positive attitudes towards it? Surely there is an element of denial in this positive ideology:

Holding negative attitudes towards older people merely because they are old is immoral, according to well-nigh universally accepted ethical standards. But is there anything immoral about disliking *some* of the concomitants of aging processes? Is it not reasonable to dislike the idea of reduced eyesight and hearing?<sup>43</sup>

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<sup>41</sup> Ann Davis, "Whoever said Life begins at 40 was a fink, or those golden years - phooey", International Journal of Women's Studies, 3 (6), p. 586.

<sup>42</sup> Susan K. Whitbourne, The Aging Body, Physiological Changes and Psychological Consequences, (Springer-Verlag, New York, Inc., 1985), p. 1.

<sup>43</sup> David Schonfield, "Who is Stereotyping Whom and Why?", op. cit., p. 271

I would go further and suggest that it is not immoral, or even unreasonable to regard the aging process with some distaste. Only an immortal could enjoy it, applaud it, revel in it. To age is mortal, to applaud it divine. For most people living in a largely secular society, there ain't much to look forward to when the aging process is done. The "I" that is not identical to the body, is not separable from it either. Of course it would be futile to be overly-negative about aging and, sure, we may well enjoy part of our old age, and certainly we will adapt and find something valuable about life even in our frailty in extreme old age if we get there, but let's not trivialize the challenges involved. To admit the difficulties involved in aging, is surely not to be ageist. To deplore the prospect of adult-diapers is not to have negative attitudes, or to behave in an immoral fashion towards those who must wear them. If anything, imagining our bodies compromised in ways that would seem to threaten our dignity and self-esteem should inspire empathy towards those so compromised. Such analysis should inspire, too, the more morally mature realization that respect for the essential dignity of human beings is not contingent upon their bowel and bladder control. To boo the negative implications of aging is to applaud those who have faced the challenges. It is to find our heroes amongst those older people who do constant battle in the face of the adversities of frailness, sensory deprivation and a whole host of other challenges. It is not to find our heroes amongst

those who exemplify the 'virtues of youth'. It does not take courage to run a marathon - it merely requires physical stamina.

There must be some realistic mean between gerontophobia and gerontophilia. It may not be a happy mean, but why should it be?:

Perhaps the worst travesty of our new direction is that whatever happens it must be positive. We will not abide with negativism, complaints, and the largest of all sins, unhappiness. Americans ad nauseum smile, stay cool, "stay on top of it". We have learned to present these super cool exteriors so well that we may be forgetting how to relate humanely, even when necessary, thus losing our capacity to react to and cope with the malaise of others because we so stringently harness our own; in the long run we are increasingly denying and thus enhancing the fear of aging.<sup>44</sup>

The charge of ageism doesn't gain moral force if it tries to pack a proscription against negative attitudes towards aging into its charge. If anything, it's likely to backfire:

It is often those who berate others for their ageist views who espouse a positive view so unrealistic that it borders on denial.<sup>45</sup>

### 2.3 Ageism and Inequality

The greatest damage to the proscriptive force of ageism has been done by those who point to the fact that any supposed perpetrator is potentially a member of the victim class - a fact which further broadens the conceptual

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<sup>44</sup> Ann E. Davis, "Whoever said Life Begins at 40 was a Fink or, Those Golden Years - Phooey", op. cit., p. 586/7.

<sup>45</sup> I. Connidis, "Life in Older Age: The View from the Top", op cit., p. 454.

chasm between ageism and racism or sexism. Some, like David Schonfield, merely argue that this fact is likely to deter ageism and that self-interest conflicts with ageist attitudes:

What benefits "them" today benefits me tomorrow. That is why the imputed similarity among racism, sexism, and ageism throws doubt on the prevalence of ageism. Advantages for a race or the sex to which someone does not belong bring no personal gain to that person and frequently bring personal disadvantage. Sexist or racist behavior is often based on selfish motives, whereas selfish motives conflict, at least to some extent, with ageist attitudes.<sup>46</sup>

Schonfield is not suggesting that this disanalogy between ageism and racism or sexism destroys the proscriptive force of ageism. He merely suggests that it would be irrational, as well as wrong, for society to discriminate against the elderly; that is, self interest on the part of those under age 65 could be expected, reasonably, to seek the enhancement of life in old age. It is interesting that this disanalogy can also yield a conclusion, to be addressed in depth later in this paper, that is the antithesis of Schonfield's suggestion. Norman Daniels explains why an age criterion in the allocation of health care resources is not discriminatory because self-interested parties to a Rawlsian social contract would support such a policy. In addition Daniels implicitly argues that the "banal fact" that we age defuses the proscriptive force of ageism because an age criterion can be seen to generate equal treatment of persons in a way which racist or sexist practices cannot. While race or gender criteria for

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<sup>46</sup> David Schonfield, "Who is Stereotyping whom and why?", op cit., p. 271.

allocation of scarce resources would generate inequalities between persons, an age criterion would not necessarily do so:

Age is different. Remember the banal fact. We grow older, but we do not change our race or sex. If we treat the young one way and the old another, then over time, each person is treated both ways....An institution that treats the young and the old differently will, over time, still treat people equally. Whereas differential treatment by race and sex always generates inequalities between persons, differential treatment by age does not necessarily generate inequalities.<sup>47</sup>

Daniel Callahan makes a similar appeal to the equality that can be generated by age criteria. In response, among others, to the argument that the category of age, like the categories of race and sex, cannot be used fairly to assign benefits, Callahan replies that such an argument is "sharply neutralized" in its power if an age criterion "treats everyone alike, aiming that each will achieve a natural life span....":

There is nothing unfair about using age as a category if the purpose of doing so is to achieve equity between generations, to give the aged their due in living out a life-span opportunity range, and to emphasize that the distinctive place and merits of old age are not nullified by aging and death.<sup>48</sup>

To define ageism as discrimination against the elderly is to define it as an intergenerational issue and to neutralize any prima facie force which it was

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<sup>47</sup> Norman Daniels, Am I My Parents' Keeper: An Essay on Justice between the Young and the Old, (Oxford University Press, New York, 1988), p. 41

<sup>48</sup> Daniel Callahan, Setting Limits: Medical Goals in an Aging Society, op. cit., p. 140

supposed to have inherited from its powerful forbears, racism and sexism. To remove the charge of inequality from the concept of ageism is to have largely dismantled the analogy between ageism and racism/sexism and to have defused the proscriptive force that the analogy engendered. The restricted, qualitative conceptualization of ageism has permitted the moral dismantlers to move in and do just that. If ageism centers attention on discrimination against the elderly, and if one can reasonably determine, from the perspective of inter-generational justice, that this discrimination is not unfair, and if one believes that our moral vocabulary is exhausted by our vocabulary of justice or fairness, then the problem of ageism in social policy turns out to be a straw man - a problem without substance, a fabrication of the gerontologists.

#### 2.4 Conclusion

There is reason to believe that ambiguity in the descriptive content of the concept of ageism, in its restrictive definition, undermines its *prima facie*, proscriptive power and that the concept of ageism, so defined, is not and cannot be packed with quite the same proscriptive force with which the concepts racism and sexism are loaded. We're not sure why ageism should refer only to discrimination against the elderly; we're not sure that such a formulation isn't, itself, ageist; we're not sure, if the victims are 'the elderly', who the victims are; the victims aren't sure who they are; we can't quite see what negative attitudes towards biological aging have to do with ageism; we

can't see why attitudes towards aging should not be negative; and although we can see why racial or gender criteria for allocation of scarce resources would be wrong by constituting a breach of equal treatment, we can't see why an age criterion would be wrong in the same way.

This is not to argue that we do away with the concept of ageism. Nor is it to argue that ageism lacks the moral importance of racism and sexism. It is to argue, however, that ageism requires reformulation in terms of both its descriptive and normative content and that a failure to do so represents a sin of omission in gerontology and ethics that has fostered capitulation with the new ideology in bio-ethics that age is morally relevant simply because it is not morally irrelevant in quite the same way that race and gender are. This latter piece of reasoning is, I contend, a non sequitur and a particularly pernicious one.

## CHAPTER II - REFORMULATION & REFORMATION

### 1. INTRODUCTION

In chapter I, it has been argued that ageism should be a universal concept and that to restrict its application to the elderly is misconceived. In addition to reformulating ageism in a universal way, four general types of ageism will be distinguished in this chapter. Unlike racism and sexism which consist in wrongful discrimination between people (interpersonal discrimination), ageism involves not only wrongful interpersonal discrimination, but, in addition, wrongful intrapersonal discrimination. Ageist practises elicit two questions: 1) Why is this person being treated differently than other people and 2) Why is this person being treated differently at Time 2, than at Time 1? It is the first of these questions that lends itself to the quick equality justification discussed earlier in this paper. For example, if social policy dictates an age criterion for mandatory retirement or for allocation of scarce, health-care resources and if that policy remains stable over time and applies to everyone in society, then there is a sense in which it can be said to be fair in that everyone is treated equally with respect to access to the job and health-care markets. This justification appeals to a simple notion of equality, sometimes called literal equality. If a pie is to be divided between eight people and if it is divided into eight, equal portions, then each person who receives a piece of the pie has been treated equally. But,



what if one or two of the pie-eaters were starving, while the others were pleasantly plump? It is reasonable to ask, in this case, if the two starving, would-be pie-eaters were treated as equals. Ronald Dworkin has characterized this difference in terms of rights, the simple notion of equality representing a "right to equal treatment" and the more complex form, a "right to treatment as an equal". The former right entails the right "to receive the same distribution of some burden or benefit" as anyone else; the latter entails the right "to be treated with the same respect and concern as anyone else".<sup>49</sup> David Braybrooke appeals to the importance of the same distinction by referring to "literal equality" and "equality-in-meeting-needs". Braybrooke quotes R.H. Tawney who encapsulates the distinction by saying that "equality of provision is not identity of provision":

Human beings have...different requirements and...these different requirements can be met satisfactorily only by varying forms of provision. But equality of provision is not identity of provision. It is to be achieved, not by treating different needs in the same way, but by devoting equal care to ensuring that they are met in the different ways most appropriate to them.<sup>50</sup>

Treating all members of society equally (identically) over a life time according to age-restricted access to the benefits of income and health care

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<sup>49</sup> Ronald Dworkin, Taking Rights Seriously, (Harvard University Press, Cambridge, Massachusetts, 1978), p. 227.

<sup>50</sup> R.H. Tawney, Equality, quoted by David Braybrooke, Meeting Needs, (Princeton University Press, Princeton, New Jersey, 1987), p. 144/145.

constitutes a minimal and, I think, immoral form of equality. Differential response to varying degrees of need and suffering is a basic requirement of any morality and to the extent that income and health care are needs, and to the extent that impeded access to them imposes suffering, to that extent are policies which appeal to equal treatment with respect to them, immoral.

Michael Walzer has argued that justice must take different forms in response to different spheres of justice. The appropriate distributive principle in the sphere of security and welfare is "need" rather than "free exchange" or "desert". He rejects "simple equality" in favour of a "complex equality" in which distributive principles are sensitive to the social meanings of the goods being distributed. Medical care constitutes a need and should be distributed according to medical needs. While Walzer does not address the issue of age criteria in allocating medical resources, his emphasis on the solidarity of community and on the equality of membership of citizens in a political community and his assertion of distribution proportional to need is consistent with denying that any group should be treated differently than any other group with respect to needs. His three principles propose:

...that every political community must attend to the needs of its members as they collectively understand those needs; that the goods that are distributed must be distributed in proportion to need; and that the distribution must recognize and uphold the underlying equality of membership.<sup>51</sup>

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<sup>51</sup> Michael Walzer, Spheres of Justice, (Basic Books, New York, 1983), p. 84.

Spheres of justice are distinguished by the kinds of goods to be allocated within them - there are not separate spheres for separate groups. The elderly, the middle-aged and the young do not constitute separate spheres and their needs should be assessed according to the sphere into which those needs fall. To introduce age-group criteria with respect to needs is to alienate from the community that group whose needs are being overlooked and to undermine 'equality of membership'. It is to create a divided society. Age is not a criterion that can be appropriately used to undermine community solidarity.

I have argued that in the sphere of needs, the measure of equality is equality-in-meeting-needs and not the simple measure of identical treatment between persons. Ageist practises, at best, attend to the morally inferior brand of equality. At worst, they ignore equality altogether and are happy to treat the same person at Time 2 differently than at Time 1 without extending any kind of equal moral concern. Of course the person may have changed in the meantime and she may have changed in morally relevant respects - she may, for example, have needs at Time 2 which she did not have at Time 1. The failure of ageism, consists not merely in a failure to attend to morally relevant changes, but in a posture that attends to morally irrelevant changes at the expense of those which might be morally relevant. Ageist practises promote immoral, intra-personal age discrimination by eclipsing the individual altogether in favour of attention to age (chronological ageism), generalizations (functional

ageism), appearance (aesthetic ageism), or imposed meaning (symbolic ageism).

The fact that ageism entails interpersonal discrimination and intrapersonal discrimination is a fact which radically differentiates ageism from racism and sexism. The disanalogy renders ageism a distinct and more complex concept. In distinguishing and exploring the four different types of ageism, I will be presenting arguments against interpersonal and intrapersonal discrimination by age.

## 2. DIRECT AGEISM: A CHRONOLOGICAL & UNIVERSAL CONCEPT

As was argued in the first chapter, restricting the concept of ageism to discrimination against the elderly is arbitrary and unfair to other age groups. Conceiving ageism as a universal concept focuses attention on the moral relevance of age, per se, and not on those features which might be thought secondarily to characterize certain age groups. If by ageism we mean discrimination that wrongly picks out chronological age as the basis for discrimination, we are led to ask questions about our understanding of time and the relevance of time to our social and moral practises. A metaphysical journey into the mystery of time would go well beyond the limitations of this paper and the competence of this writer, but a brief excursion is necessary.

## 2.1 Clockwork Consciousness

Chronological age is a measurement of lived time, but not of experienced time. Much of our life is spent asleep and unless we are dreaming and recall those dreams, we've, in effect 'lost' time in its experiential element. If we haven't enjoyed our lives, the years may seem like centuries. If we have enjoyed our lives the past years may have the breadth or durational spread of moments. Life passes 'too slowly' for the teenager, 'too fast' for the forty year old. Whatever the clock is measuring as its hands move with inveterate precision and inviolable regularity, it is not measuring human time. Yet, when a child is born, we place that child on the human map by plotting the instant of birth as if it were the beginning of a journey - a journey that will be measured in years in precisely the same way that a journey through the countryside can be measured in miles. This is a spatial conception of time, or linear time and the clock provides the standard of measure:

The clock, first invented as a means of serving man's needs, became a metaphysical device, at first a metaphor or kind of fiction applied to the human body and then a model for the entire universe. Shortly it was taken more literally in mechanistic physiology and finally rose to a position of fostering a clockwork consciousness, an expression that represented science's preoccupation with absolute, spatial time.<sup>52</sup>

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<sup>52</sup> J. Boyle, J. Morriss, The Mirror of Time: Images of Aging and Dying, (Greenwood Press, U.S., 1987), p. 93.

As so often happens, the servant became the master and the clock has become a tyrannical dictator ruling most, if not all, aspects of our lives. Having come to accept its rule, we can fight it only on its own terms:

Thus came into being 'the familiar landscape of capitalism, with the time-sheet, the time-keeper, the informers and the fines'. The battle over minutes and seconds, over the pace and intensity of work schedules, over the working life (and rights of retirement), over the working week and day (with rights to 'free time'), over the working year (and rights to paid vacations), has been, and continues to be, right royally fought. Workers learned to fight back within the confines of the newly internalized sense of time.<sup>53</sup>

Clockwork consciousness provides the framework for ascribing ages to people and for discussing a human being's life as a course through various stages delineated by age, or years lived. In doing so, it encourages a perspective that treats people like objects:

The fact that objective time derives from the perception of the motion of objects does not prevent this understanding of time from being used in connection with persons. When this is done, however, persons are treated in a manner similar to objects.<sup>54</sup>

It is a contention of this paper that a general feature of ageism is its exemplification of a clockwork consciousness. The moral dictate to respect persons is underdetermined by practises which treat persons as objects, and

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<sup>53</sup> David Harvey, The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change, (Basil Blackwell, Oxford, 1990), p. 231

<sup>54</sup> Mark C. Taylor, Kierkegaard's Pseudonymous Authorship, (Princeton University Press, Princeton, New Jersey, 1975, p. 81, quoted by J. Boyle and J. Morriss, op.cit., p. 92

ageist practises, by appealing to chronological age as morally relevant, treat persons as objects. Age is a measure of years lived and when 'years lived' is given ethical significance, people are being treated as 'containers of years'. It seems to me that 'containers of years' is not merely a morally dubious metaphor for persons, it is metaphysically absurd. Whatever time might ultimately be, or however it is to be conceived, it is certainly not something that can be packed into persons, like sardines into a can. The passage of time is now regarded as a myth:

We commonly think of time as a stream that flows or as a sea over which we advance. The two metaphors come to much the same thing, forming part of a whole way of thinking about time which D.C. Williams has called "the myth of passage". If time flows past us or if we advance through time, this would be a motion with respect to hypertime...[S]upposing that time can be measured in seconds, the difficulty comes out very clearly. If motion in space is feet per second, at what speed is the flow of time? Seconds per what? Moreover, if passage is the essence of time, it is presumably the essence of hypertime, too, which would lead us to postulate a hyper-hypertime and so on ad infinitum.<sup>55</sup>

To regard a person as somehow passing through time and accumulating years, like so much baggage, during the journey, is, at best, a metaphor. Poets may have this license, but surely ethicists and moral agents do not.

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<sup>55</sup> The Encyclopedia of Philosophy, (Macmillan Publishing Co., Inc. & The Free Press, New York, 1972), p. 126

## 2.2 Clockwork Consciousness and Moral Schizophrenia

If we take age to be morally relevant and if we wish to defend a practise that uses, for example, the age of 65 as relevant for discriminatory purposes, we seem to be saying that the person who just turned 65 is somehow different than she was before. The hand on the clock moves that one second that marks the end of 65th year and something of momentous moral significance has occurred. The moral agent sees before her a whole new person - a sixty-five year old whom she can treat differently than the one there a second before. Surely this is morally schizophrenic (not, it is to be emphasized, in its narrow clinical sense). It is schizophrenic in the sense that the person who stands before the moral agent is fractured from her past identity - there is a failure on the part of the moral agent to unify the past and present, to see continuity rather than dissociation. In a different context, it has been maintained that schizophrenia, in this sense, is a facet of postmodernism that has had implications for architecture, art, philosophy and public life. Characteristic of this schizophrenia is a "loss of temporality and the search for instantaneous impact" resulting in "a parallel loss of depth" or "contrived depthlessness". Experience is reduced to "a series of pure and unrelated presents in time". There is a "preoccupation with the signifier, rather than the signified" <sup>56</sup>. Analogously, I am arguing that the person, who is the object of chronologically,

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<sup>56</sup> David Harvey, The Condition of Postmodernity, op. cit., p. 58.



ageist contemplation is being treated as an instantaneous signifier without reference to what is signified by that person. The moral other has been fractured from her past and not only from her past, but from her intimate relations with family, friends and any other bonds by which her life is characterized and given a coherent meaning and history:

This brings us to what is, perhaps, the most problematic fact of postmodernism, its psychological presuppositions with respect to personality, motivation, and behaviour. Preoccupation with fragmentation and instability of language and discourses carries over directly, for example, into a certain conception of personality. Encapsulated, this conception focuses on schizophrenia...<sup>57</sup>

Practices and policies which discriminate by age assume that the person whom they affect has a moral relevance not there before, a moral relevance conferred by the hands of a clock. I contend that this relevance is an hallucination and that those who see it, or claim to see it, are under the influence of an atomistic conception of time that has impaired their vision of persons. Boyle and Morriss argue that a spatial conception of time results in time being seen atomistically:

Time is described as discrete, temporal now-moments taken as objectively real. This conception of time raises serious questions about the nature of the continuity of objects and of persons. How can a person possess an enduring identity which our experience seems to give overwhelming assurance of, if time consists of points that are viewed atomistically, that is, as separate and objective units?<sup>58</sup>

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<sup>57</sup> David Harvey, The Condition of Postmodernism, op. cit., p. 53.

<sup>58</sup> J. Boyle, J. Morriss, The Mirror of Time, op. cit., p. 92

Our tendency to regard others in the imaginary cloak of their immediacy, as discrete entities removed from their past and from whatever other relations give them their identity, is often a tendency for which we can be forgiven. We can't possibly have access to a person's past and all that contributes to her uniqueness in every moral encounter. What I wish to maintain is that our actions, in encounters where it is possible, ought to measure up to the person whom we confront in the same way that literary interpretations attempt to measure up to the text. This may take 'time' and effort, but who said that morality should be expedient and easy? A poignant example of our moral deficiencies in this respect is provided by Howard Brody:

Brody adds an intriguing suggestion - that good care of an aging patient includes asking him for a photograph of himself "in his prime", to attach to the medical chart, to remind the staff that they are "treating a person who has a life story, and that one is now seeing only a small part of that life story as one 'gets to know' the geriatric patient."<sup>59</sup>

The fact that a picture is required to get our moral minds to see in a non-schizoid perspective is, I think, a sad commentary on a moral world ruled by a clockwork consciousness. Our work to the rule of linear time affects our moral world in two ways. We are constantly 'pressed for time' in our moral encounters and we contemplate the moral other in the superficial garb of their

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<sup>59</sup> Howard Brody, Stories of Sickness, (Yale University Press, New Haven, 1987), pp. 163-64, quoted by Dena S. Davis, "Rich Cases - The Ethics of Thick Description", Hastings Center Report, July-August, 1991, p. 14.

present manifestation. It is the latter atomistic view that I have been drawing attention to. Worse than the effect which this divisive attitude of mind has on personal encounters, is the effect that it has when it is generalized into social policy. A policy that discriminates by age ignores the individuals whom it affects with such recalcitrant apathy that neither a recent picture, nor an album containing a myriad of pictures from the past could alter its perspective. And in this domain of social policy there is no excuse of being 'pressed for time'. When a social policy is a moral policy, that is when it will cause physical or psychological suffering, it represents the moral agents of a polis and we are accountable for what we have permitted. Social policies that cause suffering and that do so by measuring people by their years and not by their needs abstract from what is relevant about individuals in favour of what is irrelevant about them. Mandatory retirement policies and age criteria in health care access focus upon what is morally irrelevant about persons courtesy of a linear understanding of time. Needs to work, to have an income, to pursue life-plans, to continue to live, are needs neglected by a clockwork ethic that treats persons as containers of years.

### 2.3 Time in the Context of Ethics

Rather than allowing one conception of time to influence the way we treat persons, it seems to me that this flow should be reversed and that our

understanding of time (at least in the moral sphere) should flow from our understanding of persons and the way time is experienced by them. This inversion seems proper, given that human beings occupy a central, though not an exclusive, place in ethics, and given that there is no consensus amongst metaphysicians or physicists as to what time is, if it is anything at all other than a convenient metric, devised by man, by which to artificially impose order in the social world:

Space and time are basic categories of human existence. Yet we rarely debate their meanings; we tend to take them for granted, and give them common-sense or self-evident attributions. We record the passage of time in seconds, minutes, hours, days, months, years, decades, centuries and eras, as if everything has its place upon a single objective scale. Even though time in physics is a difficult and contentious concept, we do not usually let that interfere with the common-sense of time around which we organize daily routines.<sup>60</sup>

However, as Harvey points out, human experience of time does not conform to the metric of the clock. Seconds can feel like light years and pleasurable hours pass in an instant. It is notoriously the case that as we age, "time flies by" - perhaps because we recognize the boundary of our mortality and 'feel' time differently. It is also the case that what the clock measures as having occurred thirty years ago can seem just a moment or two away, a vivid recollection provided by a collapsed past that is intimately a part of the present. A moral perspective which abandons human time in favour of linear time abandons

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<sup>60</sup> David Harvey, The Condition of Postmodernity, op. cit., p. 202.

human beings. It ignores individual differences and casts its gaze upon the calculable, the common, the statistical. I am not alone in suggesting that this is an inappropriate and inappropriately dangerous moral perspective:

The concept of time in the Newtonian model, for example, has many disadvantages, not the least of which is that it makes no distinction between time for persons and time for things. Its emphasis on chronological time sets up artificial categories and standards, dictating for example, a uniform retirement age ...The physical basis of Newtonian time tends to eliminate individual differences in favor of statistical averages and fixed standards. By doing so it satisfies demands for certitude and provides absolute definitions that favor institutional solutions, but it also tends to describe processes in frozen or static categories. This is dangerous, especially where human life and growth is concerned.

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A contextualist understanding of time would recognize that different concepts of time are applicable in different contexts. I suggest that the model of time appropriate to ethics is the model of human time and not the linear model of time, which serves us well in running railways but fails as a measure of moral relevance and serves us poorly in our attempts to measure up to persons. It follows that directly ageist practices, which appeal to chronological age as a criterion for discrimination, fail to treat persons in ways that are relevant to personhood.

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<sup>61</sup> J. Boyle, J. Morriss, The Mirror of Time, op. cit., p. 188.

### 3. INDIRECT AGEISM: FUNCTIONAL, AESTHETIC & SYMBOLIC

Direct ageism consists in discrimination that wrongly picks out chronological age as morally relevant - age, as such, is directly appealed to. It is characteristic of this form of ageism that a definitive age, such as 65, or, 40, or 18 is seen as morally relevant. I now wish to distinguish direct ageism from indirect ageism. Indirect ageism wrongly assigns moral relevance to age group generalizations (functional ageism); to aesthetic ideals (aesthetic ageism); and to symbolic ideals (symbolic ageism). Age is not directly appealed to as the relevant criterion for discrimination in these types of ageism, but practises which are indirectly ageist treat people differently over the course of their lives according to standards which are either morally irrelevant, or morally suspect. Generally speaking, indirect ageism represents a failure in agent-perception - a failure to see, feel and understand the moral situation properly and to respond appropriately. It is a failure to live up to the Aristotelian maxim:

...to have these feelings at the right times and for the right things and towards the right men and for the right purpose and in the right manner, this is the mean and the best and it is precisely this which belongs to virtue.<sup>62</sup>

Frequently, indirect ageism supports direct, chronological ageism. An example might help. Loss of skin elasticity is a feature of the biological aging

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<sup>62</sup> Aristotle, Nicomachean Ethics, 1106b21-3, Aristotle - Selected Works, Hippocrates G. Apostle, Lloyd P. Gerson, translators, (The Peripatetic Press, Iowa, 1982), p. 445.

process and wrinkles are a feature of most middle-aged and elderly people. Should some society find wrinkles to be a morally relevant criterion for discrimination, people with wrinkles might be sent to the back of the bus. They would find themselves treated differently at different stages in their lives for morally irrelevant reasons. This would be a case of aesthetic ageism. No doubt bus schedules would be upset, with delays caused by wrinkle-regarding bus drivers, therefore a socially expedient alternative would be to make a rule that everyone over the age of 35 goes to the back of the bus. In this sense, indirect, aesthetic ageism is used to underwrite direct, chronological ageism. This example seems far fetched, but something analogous is occurring in recommendations with respect to health care allocation and will be addressed under aesthetic and symbolic ageism.

### 3.1 Functional Ageism

By functional ageism, I mean discrimination that indirectly affects persons in various age groups because it is based upon generalizations about age-related, physiological and psychological changes that affect the person's ability to function as a human being - properties such as strength, sensory acuity, sexuality, memory, cognition, personality. An example of functional ageism would be a nursing home policy that segregates the sexes on the basis that sexuality is not a property of old people. (If the rationale is that sexuality ought

not to be a property of old people then this falls under what I will later discuss as symbolic ageism). Aptitude tests which measure speed of cognitive processing rather than cognition as such might be thought to be functionally ageist should such tests be used to evaluate candidates for positions where mental alacrity is not an issue but sound cognition and work experience are.

At the other end of the scale, age restrictions that have to do with voting, driving a car, with purchasing alcohol, or with admission to universities or armies might arguably be functionally ageist if such restrictions are premised upon supposed personality 'defects' or cognitive 'deficiencies' associated with youth, such as incautiousness, irrationality immaturity, or stupidity. Age restrictions in these examples might be thought to constitute direct, chronological ageism supported by indirect functional ageism. Whether or not such restrictions can be socially condoned depends on the extent to which such restrictions actually fall within the moral sphere (how much suffering do they impose?), the extent to which such restrictions are necessary for the public good and/or the best interests of those whom they restrict and the conceivability/availability of other means to measure suitability or candidacy for these privileges of social life. I emphasize privileges because I do not believe these age restrictions cause significant suffering or violate basic human rights. Those who are inconvenienced by such policies recognize that they are not the victims of a life-sentence - having attained the appropriate age they, too, will



enjoy the privileges. Such policies constitute either a direct or an indirect form of passive paternalism and may well be justified as in the best interests of the younger group whom they affect or of society at large. I will not address these issues in this paper because I believe a distinction can be made between age policies which withhold privileges and age policies which uncontentionally cause great suffering. The latter fall squarely within the moral sphere. A major thesis of this paper is, however, that ageism as a concept should leave space for these questions to be addressed. Such questions are too summarily disposed of by saying that they are not analogous to questions of racism and are therefore morally insignificant. For example, Thomas Flanagan, who discusses age discrimination (ageism) in a universal sense, points to a disanalogy with racism as a sufficient reason to conclude that retirement and other age-based policies can be condoned if they are socially expedient, or serve "some rational purpose" even though such justifications would be considered immoral with respect to racial policies:

To speak of age classification as 'age discrimination' is wrong. Race should be irrelevant to decision-making because to act upon it is incompatible with and dangerous to liberal democracy. These great risks are not balanced by any gain in predictive power which cannot be secured otherwise. Age, in contrast, is a useful predictor which neither creates enduring injustices nor divides society into warring camps.<sup>63</sup>

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<sup>63</sup> Thomas Flanagan, Age Discrimination in Canada, (Research Unit for Socio-Legal Studies, Faculty of Social Sciences, The University of Calgary, 1985), p. 18.

Flanagan compares social policies that would restrict the right to vote by race and by age:

Thus there is a fundamental difference between refusing the franchise to X because she is Black and refusing the franchise to Y because she is fourteen. Y has only to wait a few years but X will never be able to vote.<sup>64</sup>

The "fundamental difference" which Flanagan refers to is the fact that "Age does not create enduring minority groups" while race "creates permanent groups which we can never leave".<sup>65</sup> In reply, I suggest that this "fundamental difference" does not apply to the elderly who do constitute an enduring group in the same, non-abstract way that Black people constitute an enduring group - they constitute it until they are dead. It is true that the elderly did not constitute this group in their past, but why would freedom from oppression in the past be a morally compelling excuse for oppression in the present? Could apartheid be justified with respect to Black people who had recently moved to South Africa from America on the basis that they had not experienced discrimination before?

In addition this "fundamental difference" could be used to support unjust policies towards teenagers if all that is morally relevant is the fact that such policies are temporary. Temporariness does not, in and of itself, confer moral

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<sup>64</sup> Thomas Flanagan, *ibid*, p. 16.

<sup>65</sup> *ibid*, p. 16

propriety upon a practise. What is of moral importance is not whether a policy affects persons temporarily, but whether what is temporarily done to those persons is just. The policies directed towards adolescents which Flanagan is defending require support of a different sort than an appeal to brevity. Such support is conceivable because the age policies affecting adolescents are policies which merely withhold privileges. The paternalistic support which may succeed in justifying age criteria in policies with respect to voting, driving and drinking will not succeed in justifying all forms of age discrimination. One cannot argue with any degree of conviction that mandatory retirement policies and age criteria in health care policy merely withhold certain privileges and are in the best interests of those whom the policies affect, or society at large.

I conclude that, on the one hand, Flanagan's "fundamental difference" does not constitute a consistent disanalogy and on the other hand, where it does constitute a disanalogy, it fails to capture what is of moral importance. His argument blurs together radically different forms of age discrimination - those forms which deny privileges and those forms which cause suffering by failing to recognize individual merits and to respond to individual needs. In defending childhood and adolescent age policies as essential for efficiency and expediency, Flanagan argues that human rights activists cannot condone these practises and object to fixed age retirement:

Human rights activists may scoff at this line of reasoning, asserting that they have no desire to interfere with entering school or obtaining drivers licenses. But is there a difference between these situations and the more conventional anti-discrimination situations of hiring and retirement? If an employer must assess each worker on his merits relative to retirement, why must not a school assess each prospective student individually? Why is the school's convenience more important than the employer's? Children vary at least as much in their rate of maturation as employees do in their rate of senescence.<sup>66</sup>

In addition to failing to cite his temporariness criterion for distinguishing these practices, Flanagan supports, by the same appeal to bureaucratic efficiency and social expediency, forms of age discrimination which are radically different in terms of the suffering they cause to the actual persons whom they affect. By ignoring, altogether, the issue of age criteria in health care, Flanagan understates the depth of the problem of age discrimination and the dangers of justifying age policies by appeals to efficiency and expediency. The conclusion he draws from the "fundamental difference" between discrimination by race and discrimination by age is that the latter, but not the former, can be justified by utilitarian appeals to expediency. This conclusion is helped along by what I consider to be an overly optimistic distinction between racism and ageism:

There are no ideologies of 'ageism' comparable to racism. There are no parties or movements which advocate the enslavement of children or the extermination of the aged. No one publishes forgeries purporting to show that there is a conspiracy of the young, middle-aged, or old to rule the world...So-called 'age

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<sup>66</sup> *ibid*, p. 36,37.

discrimination' is not a signpost pointing the way to a more horrible fate for these groups.<sup>67</sup>

I beg to disagree. The distinction is not fail-safe. The potential for inter-age-group antagonism is inherent in the concept of intergenerational equity when it is combined with a situation of real or perceived scarce resources.

Recommendations for age criteria in health care arguably advocate the passive extermination of many elderly people and are compatible with a more active kind of extermination as I shall argue in a later section of this thesis. Flanagan's conclusions are another case of the non sequitur involved in comparing age discrimination with racial or gender discrimination and then assuming the former is morally innocuous because it is not analogous to the latter.

It is obviously wrong to approach a teenager with the preconceived notion that she is irresponsible, irrational, incautious and stupid. It is equally wrong to attend to an older person with the preconceived notion that she is either wise and responsible, or dim-witted, slow and overly-cautious. I'm sure that very old men and women everywhere in North America wince at the a priori ascription of 'sweetness' to them. How often have I heard the expression, "What a sweet old man"! How often has that ascription been assigned to an aged and unrepentant Nazi? How often is it assigned to a middle-aged man? Is frailty either a necessary or a sufficient condition for 'sweetness'? Such

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<sup>67</sup> *ibid*, p. 18

preconceived generalizations foster either deference where deference may not be due, or patronization where patronization may not be due, or they just plain miss the moral target by insults and compliments aimed randomly at illusions.

What role should age-group generalizations regarding physiological or psychological properties play in moral thinking and behaviour? Minimally, questions of morality may be said to be questions of how one should act, if one is to act rightly. Whether the moral agent is guided by duty-based criteria for right action, by a virtue ethic, or by goal-directed criteria, these theoretical considerations are context-specific. Moral action does not take place in a vacuum. It characteristically involves other people and questions related to their capacities to enjoy and to suffer and questions of how the agent's attitudes and behaviour affect them. The moral propriety of an act has as much to do with the agent's perception of the moral occasion as it has to do with the agent's response to it. I appeal here to a tradition in ethics inherited from Aristotle in which the agent's moral perception is context-bound rather than strictly rule-bound and in which excellence of perception requires attention to nuance and fine-shading:

Principles, then, fail to capture the fine detail of the concrete particular, which is the subject matter of ethical choice. This must be seized in a confrontation with the situation itself, by a faculty that is suited to confront it as a complex whole...'Perception' can respond to nuance and fine shading, adapting its judgment to the

matter at hand in a way that principles set up in advance have a hard time doing.<sup>68</sup>

Aristotle argued that a moral agent who relies exclusively upon antecedent general principles of ethics is like an architect who attempts to measure a fluted column with a straight ruler. The inflexibility of such rules cannot measure up to the concrete ethical situation. As the architect needs a flexible ruler, the moral person needs responsive deliberation:

Good deliberation, like this ruler, accommodates itself to what it finds, responsively and with respect for complexity. It does not assume that the form of the rule *governs* the appearances; it allows the appearances to govern themselves and to be normative for correctness of rule.<sup>69</sup>

I am arguing, in much the same manner, that agents who rely on preconceived empirical generalizations cannot help but fail to measure up to the particularity of the occasion and the particularity of the person who is the object of the moral moment. To invert Aristotle's analogy, preconceived age-group generalizations turn the moral other into a straight wall, rather than the contoured and intricately curved, column that is personhood. If anything is measured at all in such myopic encounters, it may well be a mirage.

Preconceived generalizations about people invite bad moral vision. The moral other comes pre-packaged, hidden in the cellophane layers of

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<sup>68</sup> Martha Nussbaum, The Fragility of Goodness: Luck and ethics in Greek tragedy and philosophy, (Cambridge University Press, New York, 1989), p. 300-301

<sup>69</sup> Martha Nussbaum, The Fragility of Goodness, *ibid.*, p. 301

expediency, providing easy moral purchase and a quick exit from the moral supermarket. This is bargain-basement morality - a cheap and easy solution to a rich and tangled enterprise. When people come differentially colour-coded according to their life phase and when their contents are specified according to characteristics that are generally thought to be correlated with that phase, something has been lost in the process:

We know that change occurs between conception and death. The changing moral significance of segments within that continuum of change is the subject of open dispute. Part of the problem is that we do not seem able to leave the task of arbiter to simple physical ontogeny. What chronology tells us will not comfortably provide easy criteria for vigour, alertness, creativity, resourcefulness, culpability, and so on.<sup>70</sup>

There is no question that there is a continuum of change in the process that carries us from conception to death. To try to tailor this continuum of change to a time scale is an artificial and inaccurate enterprise. To suppose that individual people conform to this messy metric is shoddy cognitive craftsmanship and to impose this messy metric upon them and judge them according to it is morally misconceived.

### 3.2 Aesthetic Ageism

Two types of aesthetic ageism can be distinguished. The first consists in discriminatory treatment that favours aesthetic ideals associated with youth - we

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<sup>70</sup> S. Godlovitch, "Aging and Moral Deference" International Journal of Applied Philosophy, (Vol. 4, Fall, 1988), p. 59.



might call them the coca-cola-crowd 'virtues' of lithe, slim, tanned bodies; straight, shiny teeth; taut, effervescent complexions and gracefully aligned features. No doubt such aesthetic ideals have been problematic for millions of young people who fail to portray them and no doubt this is morally problematic in that respect for persons is being eclipsed in favour of respect for form. In addition there can be little doubt that middle-aged, as well as elderly people suffer the effects of aesthetic ageism. They find themselves being treated differently as they age according to appearance-related changes of the aging process. It would be an interesting gerontological research endeavour to see how wrinkles and white hair affect job opportunities for those over forty. This kind of research is inchoate in recent studies in gerontology that attempt to measure stereotyping of the elderly. These studies try to overcome the equivocation in questions about 'old people' or 'the elderly' by providing photographs as stimuli. In a recent study, respondents, imagining themselves as evaluating job applicants, were given a photograph of the same man, either at age 23, 52 or 73, along with some brief biological data (not including age). Respondents were asked to rate the applicants on various characteristics, such as competence, intelligence, power, flexibility, attractiveness and speed. The important causal relationship between aesthetic ageism and functional ageism is, I believe, implicit in the results. The study showed a tendency to infer

deterioration in competence, intelligence, speed and flexibility from white hair and wrinkles:

The results revealed that, as hypothesized, the older target person was more negatively evaluated for a wide range of characteristics than either the middle-aged or younger person... <sup>71</sup>

That people should be evaluated for jobs according to their ability to perform the tasks involved is an uncontentious moral norm. Hiring practises which exclude applicants on the basis of colour cannot be morally condoned; hiring practises that involve aesthetic ageism are equally unpalatable. Women may be in double-jeopardy with respect to such practises:

One final, but important, point. It is an unfortunate fact about our society that, in the eyes of many, men become distinguished looking with age, but women just get to looking old. If this is so, then we have yet another reason for rejecting discrimination on the basis of physical or sexual attractiveness. The property is not only a function of the natural lottery. In addition, our society judges female and male aging with a decided bias towards the male. This makes the whole business even more unfair. <sup>72</sup>

If one takes a universal approach to ageism, one would be prone to investigate if, and to what extent, middle-aged and older people are guilty of aesthetic ageism with respect to younger people. I have frequently witnessed, from middle-aged and older people, appalled remarks about doctors looking

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<sup>71</sup> William C. Levin, "Age Stereotyping: College Student Evaluations", Research on Aging, (Vol. 10 (1), 1988, p. 141.

<sup>72</sup> Wilfred J. Waluchow, "The Ethics of Hiring: Should Looks Count", Business Ethics in Canada, edited by D.C. Poff and W.J. Waluchow, (Prentice-Hall Canada Inc., 1987), p. 203.

"too young" and the inference seems to be that youthful looks are a sign of incompetence. One can think, too, about assaults on the person that take the form, "still wet behind the ears", "pimple-faced youth", etc. Gerontological studies that concentrate on attitudes towards the elderly portray the elderly as victims - victims, who might turn out to be, were the studies more holistic, perpetrators of the same kinds of ageism. Such studies promote an unbalanced view and also fail to address the problems faced by those in middle age. The study by Levin discussed above suggested, but did not analyze, that the middle-aged person was judged more harshly than the younger person on the characteristics of speed, flexibility, creativity, pleasantness and social involvement.

The point to be made here is that ingenuous respect for persons may require ingenious moral vision. Such vision may require, not that we deny our aesthetic senses in our moral encounters, but that we develop them. The worth of a human being cannot be judged like a grecian urn... or can it? To do justice to a person is to see that person vividly, to feel for that person deeply, to acknowledge the diversity and drama, the loves and fears, the dreams and devastations that have comprised that person's life. In this sense, to respect a person is to be a John Keats confronted by a grecian urn - it is to be concerned with the eternal expression of the human condition in that person, it is to transcend mere bodily form and attend to character and confront the complexity

of elements that compose it and, above all, it is to rise above a trivial conception of beauty and to proclaim something morally akin to the poetic paradox that "Beauty is truth, truth beauty".

I am not suggesting that it would be realistic to treat every moral encounter with the sensitivity of a poet, or an artist. Indeed such intensity of interest would be annoying in the extreme for the other person on very many occasions. However, I am suggesting that this is a goal to which we should aspire... in a more abstract way. There is a tendency in ethics to simplify - to reduce the good to a 'thin' theory, to reduce the right to an expedient calculation, to reduce the moral agent to an abstraction, albeit a rational one, to reduce personhood to atomic autonomy, to reduce personal identity to psychological connectedness. These are impoverished accounts. Obfuscation is not a virtue, but neither is over-simplification and when it comes to encounters with human beings, I think we'd do well to err on the side of obfuscation rather than simplification. There is something about them...an 'I know not what' that may demand a leap of imagination, and certainly more than a generalization, to live up to it. In this regard, I share with Martha Nussbaum and others the belief that moral perception has much to do with a sensitive and responsive imagination and much to do with cultivating it by literary study.

Moral knowledge...is not simply intellectual grasp of propositions; it is not even simply intellectual grasp of particular facts; it is perception. It is seeing a complex, concrete reality in a highly lucid

and richly responsive way; it is taking in what is there, with imagination and feeling.<sup>73</sup>

The moral maxim to 'respect persons' is a barren command, suggesting merely that we ought to salute their rationality. That they are unique, or dying, or suffering, or desperate, or afraid, are observations not countenanced by an account of respect for persons that focuses on the dictates of reason. We need to cultivate our aesthetic sense of what human beings are and of what it is about them that commands our moral attention - whatever else it may be, it is certainly not their physical appearance.

The second type of aesthetic ageism consists in a failure to discern and respond appropriately to tragedy. This failure of perception may be the result of a psychological defence mechanism that precludes extending empathy where empathy is appropriate - a failure to put oneself in another's shoes and feel another's plight as she might feel it. It is an unbalanced vision that concentrates its focus upon happy, or orderly endings and upon characters who excel in physical terms, but lack spiritual or psychological depth. The movement, in Gerontology, to emphasize the positive aspects of aging was guilty, I contend, of this type of aesthetic ageism. It brought us new heroes:

"The 75 year old marathon runner, the 80 year old university graduate, the woman celebrating her 105th birthday, or the couple

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<sup>73</sup> Martha Nussbaum, "Literature and the Moral Imagination", Anti-Theory in Ethics and Moral Conservatism, Edited by Stanley G. Clarke and Evan Simpson, (State University of New York Press, New York, 1989), p. 116

enjoying their 75th wedding anniversary. While presenting "exceptional seniors" is a positive portrayal of aging, such spectacular successes may threaten the self-esteem of the vast majority, who pale in comparison.<sup>74</sup>

The new ideology of aging contrived to paint a portrait of aging that was aesthetically pleasing and comfortable. Its heroes were, however, not heroic. Making the most out of one's physical or intellectual talents may be admirable, but it's not heroic. Heroism has to do with courage and courage implies knowledge of what is to be feared. To acclaim a hero is to recognize how that person confronts what is to be feared - happiness is not a feature of heroism. Rather than looking for our heroes amongst the smiling, triumphant faces in the sports and social sections of our newspapers, we might look, instead, in palliative care wards, in AIDS hospices, in chronic care wards and in nursing homes.

Gerontologists, believing that there was a positive correlation between negative attitudes towards the aging process and negative treatment of the elderly, tried to solve the latter by promoting positive accounts of aging. In doing so they gave a decidedly narrow portrayal of the aging process, one which idealized aging only to the extent that it could mimic youthful vitality and happiness. To try to paint the world with the palette of youth and happiness, in this way, is to create a superficial and silly rendering of the drama and

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<sup>74</sup> I. Connidis, "Life in Older Age: The View From the Top", op. cit., p. 451.

tragedy of life. We lose the gloom, but we also lose the depth that comes from contrast, the richness that lurks in shadows. As moral agents we lose perception of the plight of others. By avoiding confrontation with our own fears, we preclude feeling pity for others:

The belief structure of fear is intimately connected with that of pity. Aristotle stresses repeatedly that what we pity when it happens to another, we fear in case it might happen to ourselves...And since pity already, in his view, requires the perception of one's own vulnerability, one's similarity to the sufferer, then pity and fear will almost always occur together.<sup>75</sup>

Pity is a powerful moral force - it moves us to a compassionate response to suffering. A refusal to see the tragic elements of life may gird us against perception of our own vulnerability, but it also anaesthetizes our response to the plight of others:

If life is a tragedy...see that; respond to that fact with pity for others and fear for yourself. Never for a moment close your eyes or dull your feelings. The ideal is summarized by [Henry] James...as one of "being finely aware and richly responsible."<sup>76</sup>

Alfred North Whitehead has characterized this failure to respond as a kind of anaesthesia, "a slow paralysis of surprise". It consists in the "elimination of feeling". I have suggested that moral perception of persons in concrete situations requires development of aesthetic appreciation - development that

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<sup>75</sup> Martha Nussbaum, The Fragility of Goodness, op. cit., p.385

<sup>76</sup> Martha Nussbaum, "Flawed Crystals: James's, The Golden Bowl and Literature as Moral Philosophy", New Literary History, (Volume 15 (4), 1983), p. 35.

goes beyond inane appreciation of pretty faces and happy endings. This constitutes, I believe, an important relationship between the aesthetic and the moral - to respect persons in some morally meaningful way is to go beyond saluting their rationality. It requires imaginative attention to a life story, to its complexity and uniqueness. It also requires sensitivity to the ways in which human life is tragic:

As soon as high consciousness is reached the enjoyment of existence is entwined with pain, frustration, loss, tragedy. Amid the passing of so much beauty, so much heroism, so much daring, Peace is the intuition of permanence. It keeps vivid the sensitiveness to tragedy; and it sees tragedy as a living agent persuading the world to aim at fineness beyond the faded level of surrounding fact.<sup>77</sup>

If human beings have, in common, one characteristically tragic flaw, it is their desire, other things being equal, for immortality. In this sense, most of us are tragic characters. In a secular society we may have banished the gods, but we have not extinguished the conceptual flames of eternity and immutability that fired our imaginary quest for immortality. We are all, while the quality of our lives is such that life holds value to us, guilty of this hubris. Of course, if the gods are gone, hubris is no longer a crime. Or is it? The answer is that we are now charged with a secular form of hubris:

We must, in short, work to change the cultural context in which the care of patients takes place, and that means changing those

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<sup>77</sup> Alfred North Whitehead, Adventure of Ideas, (The Free Press, Macmillan Publishing Co., Inc., New York, 1967), p. 286.



fundamental perspectives that bespeak more the ambition and hubris of technological medicine and its drive to control nature than a reflection of human ends and experience carefully considered. The means of medicine have come to dominate the proper ends of medicine. The ends of medicine have never entailed the necessity to banish illness and death or demand full control over our finite biological nature.<sup>78</sup>

The mortal god invoking our hubris thinks that human beings should come to terms with their mortality by aspiring to a "reasonable length of life".<sup>79</sup> His thunderbolts, issuing from the realms of economy and social utility, are aimed at a particular segment of our society:

A society would, then, be well justified in the future to set an age limit on the public provision of expensive, life-extending, curative health care...<sup>80</sup>

The aesthetic narrowness of Callahan's vision denies that death may be a tragedy for the older person who faces it. God forbid that the elderly, whom Callahan claims are biographically complete in virtue of their age, should "rage against that good night". Not only does he rob the elderly person of equality of moral concern by suggesting a universal policy that abstracts from the individual, he denies a compassionate expression of equal concern for elderly people who suffer the prospects of their own death. From this remote

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<sup>78</sup> Daniel Callahan, What Kind of Life: The Limits of Medical Progress, (Simon and Schuster, New York, 1990), p. 248/9.

<sup>79</sup> Daniel Callahan, What Kind of Life, *ibid*, p. 152

<sup>80</sup> Daniel Callahan, What Kind of Life, *ibid*, p. 153.

perspective we cannot regard elderly persons as protagonists in their own life stories who may or may not have overcome that tragic flaw that marks us all, who may or may not be prepared to face death. We are not seeing them vividly as they really are, we are seeing them thinly through a veil of stoicism that has been imposed upon them. Life's not like that. Old age does not, in itself, confer a loss of love for life:

If I think that millions of people will greet the sun tomorrow and I may not, I get mad. Well, I am old. I had a good and full life. I tried my best, and I should be ready to leave, or at least I should be able to learn how to accept the end and wait quietly. I loved and was loved - and that I shall not take with me? Then I will not go.<sup>81</sup>

Grotjahn, in a penetrating self-analysis, give us a 'thick' description of the drama of confronting death in old age. It is a strong antidote to the propensity to rob old age of the tragic element of death: "I am not ready to say goodbye to this life. I am not ready to say goodbye to myself. That seems to be the worst: to say goodbye to myself".<sup>82</sup> In an unpublished research study which I recently undertook with other students, it was found that 88% of those surveyed were prepared to say that those 65+ require less support in coming to terms with their own deaths than younger people. This is not aesthetic ageism, since

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<sup>81</sup> Martin Grotjahn, "Being Sick and Facing 80: Observations of an Aging Therapist", Death: Current Perspectives, Edwin S. Schneidman, Editor, (Mayfield Publishing Company, California, 1984), p. 253.

<sup>82</sup> Martin Grotjahn, *ibid*, p. 252.

it is a belief about a statistical group which may or may not be true. Such beliefs are not moral or immoral - right, or wrong - they are true or false. It would, however, constitute aesthetic ageism if this belief, whether true or false, served as a blind-spot in society's vision of who deserves palliative care. My own observations lead me to believe that palliative care that addresses the psychological needs of dying persons, is not a feature generally found in nursing homes. As a society, I think we defer to the needs of the dying young almost to the exclusion of the elderly. This is a kind of discrimination that abstracts from the actual suffering of actual individuals in a mean and cruel fashion.

It is one thing to stoically accept death for oneself, it is another to make a stoic response to death normative for others. It is one thing to suggest stoical acceptance of death as an ideal, it is another to mandate it by denying life-saving treatment to certain groups of individuals who, it is believed, have either come to terms with death, or ought to have if they haven't. Those who believe that an age criterion in health care can be underwritten by an assumption that elderly persons should stoically accept their own deaths are dabbling in thin ethics and aesthetic ageism. The antidote to aesthetic ageism is a sensitive awareness of the tragic and the heroic aspects of human life and the determination to see them wherever they are exemplified and to respond to them accordingly:

Do not go gentle into that good night  
 Old age should burn and rave at close of day;  
 Rage, rage against the dying of the light.<sup>83</sup>

The tragedy of death can be found in any life story where the dying protagonist finds her life worth living. Denying that death is a tragedy in old age, simply because a person is old and without reference to the quality of that person's life is an a priori ascription that is as productive of immoral oversight as would be the ascription of happiness to childhood. To act upon the latter ascription would be to ignore the lives of physically and psychologically abused children and to create a social system devoid of child welfare workers and psychologists.

Death may not be a misfortune or tragedy if one takes the postmortem perspective that Lucretius takes - what could be unfortunate or tragic about experiencing nothing? But the postmortem perspective is not the human one, the human perspective of death is the view anterior to it. This is the view from which death can be seen as entailing the loss of everything that one holds dear. I'm not sure that 'fear' is quite the right way to characterize the human attitude towards death. I should think that anticipatory grief might characterize it more accurately. Those who grieve the anticipated loss of self and all that the self held dear should arouse our moral sympathy irrespective of their age.

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<sup>83</sup> Dylan Thomas, "Do Not Go Gentle into That Good Night"

There is a tendency to analyze the misfortune or tragedy of death in terms of the desires or projects that are permanently frustrated by death:

The fear of death need not grow out of a confused conception of death as a state which is somehow suffered, as Lucretius claims; it may be the entirely rational corollary of the desire to do certain things with one's life. Furthermore we often pity a person who has died on exactly the ground that death prevents the satisfaction of certain desires, and not merely - as Nagel suggests - that death closes certain possibilities that the subject may or may not have wanted to realize.<sup>84</sup>

I would say, rather, that anticipatory grief at the prospect of our own deaths is the entirely rational corollary of valuing one's existence. That is why Grotjahn's remark that 'saying goodbye to oneself is the worst' is so poignant. It gets to the heart of the matter about death and it gets to the heart of the matter without an unnecessary and I think, wrong, emphasis upon fear and things left undone. I believe that we fear a painful dying process, but we grieve our deaths. An emphasis upon 'things left undone' or unmet goals, or frustrated desires, is a perspective on the misfortune of death that invites the view that death in old age is not unfortunate or tragic. Many elderly people have 'met their goals', had their children and their careers, done, in Callahan's words, 'what there is to do' and are 'biographically complete'<sup>85</sup>. The metaphor in such thinking seems to be the production line - one goes along gathering bits and pieces of the

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<sup>84</sup> Ruth Cigman, "Death, Misfortune and Species Inequality", Philosophy and Public Affairs, (Vol.10 (1), 1980), p. 58.

<sup>85</sup> Daniel Callahan, What Kind of Life, op. cit., p. 153

required assemblage for a complete life and then one pops off at the other end - finished, complete and ready for death. There may be an unanticipated irony here - the self at the end of the production line, by now the complex integration of so many valued experiences may be the person most likely to suffer extreme grief at the prospect of loss of self. There is some empirical evidence to support this hypothesis. A recent study of personal meaning systems in young and old adults suggested that young adults view themselves negatively according to some future ideal that involves succeeding in their desires, dreams and goals: "...[T]hey create, so to speak psychological pain for themselves by worrying about their personal inadequacy and about the fulfillment of their future aspirations" <sup>86</sup>. On the other hand:

[Elderly adults] have dropped excessive self-criticism and thus achieved self- and life acceptance by changing the content and standards of self- and life evaluation. They do not criticize themselves as harshly as the young adults, and they do not retain ideas of future self-realisation and expansion but consider their goals as attained or stop wanting things no longer available. <sup>87</sup>

I do not wish to engage in speculation about differential age-group suffering with respect to impending death, although such speculation might be of interest to utilitarians in calculating the consequences of various types of restrictions in health care. For example, if intensity of suffering is relevant to the calculus, a

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<sup>86</sup> Freya Dittmann-Kohli, "The Construction of Meaning in Old Age: Possibilities and Constraints", Aging and Society, (Volume 10, 1990), p. 289.

<sup>87</sup> *ibid*, p. 291

utilitarian approach to health care allocation might suggest that it would be better to withhold life-saving technology from the young who suffer less the prospect of the death of a self that they don't particularly cherish.

Considerations of that kind are, however, antithetical to the moral standpoint propounded in this paper - a standpoint which regards age-group generalizations to be of no moral relevance either to individual agents or to society in responding to basic human needs. The point I wish to make is that an a priori assumption that elderly individuals do not suffer at the prospect of their deaths fogs our moral vision and invites inappropriate responses - in particular the response that we need not treat them as equals in allocating life-saving technology.

### 3.3 Symbolic Ageism

Symbolic ageism arises out of the very human enterprise of trying to imbue life with meaning - in this case of trying to impute distinct meanings to distinct phases of life. The metaphor appealed to seems to be that of seasons. As we can distinguish four seasons in the birth, growth, decay and death of plants in the annual course of nature and as we can discern characteristics specific to each season, so also can we distinguish distinct age phases, and qualities which characterize them, in the life of a human being that correspond to the seasons of nature. This is an imaginative and poetic account of aging

and morally innocuous if the analogy is not taken further. If, however, the analogy is pressed into normative service to produce separate meanings and norms for the different seasons of human life, the metaphor begins to lose its appeal. The analogy suggests that the meanings and norms that characterize 'the winter' of human life are to be given solely in terms of death and, further, that winter/old age is different in this respect than the spring, summer and autumn of our lives. Such an emphasis on distinct seasons with distinct meanings and norms destroys the concept of a whole life by fracturing the unity that such a concept entails:

Any contemporary attempt to envisage each human life as a whole, as a unity, whose character provides the virtues with an adequate telos encounters two different kinds of obstacle, one social and one philosophical. The social obstacles derive from the way in which modernity partitions each human life into a variety of segments, each with its own norms and modes of behavior. So work is divided from leisure, private life from public, the corporate from the personal. So both childhood and old age have been wrenched away from the rest of human life and made over into distinct realms. And all these separations have been achieved so that it is the distinctiveness of each and not the unity of the life of the individual who passes through those parts in terms of which we are taught to think and to feel.<sup>88</sup>

Alastair MacIntyre suggests that personal identity and the unity of a human life are best understood in terms of a narrative quest in which we are co-authors. We are born into roles "into which we have been drafted" and we create our

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<sup>88</sup> Alasdair MacIntyre, After Virtue: A Study in Moral Theory, University of Notre Dame Press, Indiana, 1984, p. 204.



stories within a context co-authored by other people. A moral story, or a moral life, consists in the quest for an unspecifiable telos - "the good for man" - and this quest is "always an education both as to the character of that which is sought and in self-knowledge". The virtues, according to MacIntyre assist us in that quest by enabling us to achieve the goods internal to practices and by increasing our knowledge of the good for man which is our goal:

The virtues therefore are to be understood as those dispositions which will not only sustain practices and enable us to achieve the goods internal to practices, but which will also sustain us in the relevant kind of quest for the good, by enabling us to overcome the harms, dangers, temptations and distractions which we encounter, and which will furnish us with increasing self-knowledge and increasing knowledge of the good. The catalogue of the virtues will therefore include the virtues required to sustain the kinds of households and the kind of political communities in which men and women can seek for the good together and the virtues necessary for philosophical enquiry about the character of the good.<sup>89</sup>

It is true that MacIntyre's perspective involves seeing old age as the ending of a narrative, but it is not true that his position entails ascribing distinct virtues to old-age, or leads us in any way to detour from a focus on the goal, 'the good for man', to a focus on 'the good for old men'. It is ironic, if not perverse, that Daniel Callahan quotes MacIntyre<sup>90</sup> in an effort to support a thesis that implicitly ascribes to old-age certain virtues geared towards attaining an age-

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<sup>89</sup> Alasdair MacIntyre, *ibid*, p. 219.

<sup>90</sup> Daniel Callahan, Setting Limits, *op. cit.*, p. 46

related 'good'. The good, for the elderly, according to Callahan is to prepare for death and to serve the young. Callahan complains that old-age is devoid of meaning and he takes old age out of the context of a whole life and imputes to it a distinctive set of norms - he, to paraphrase MacIntyre, 'wrenches it away from the rest of human life and makes it over into a distinct realm so that it is the distinctiveness of old age and not the unity of the life of the individual in terms of which we are to think and feel'. Paradoxically, Callahan bemoans the fact "that our civilization has repudiated the concept of "the whole of life", while at the same time claiming that the concept of a whole life requires a number of conditions, one of which consists in recognizing "that old age is of necessity marked by decline and thus requires a unique set of meanings to take account of that fact...".<sup>91</sup> Surely the concept of a whole life, and the narrative unity that characterizes it, presuppose intelligible continuity throughout the story and not a start and stop adventure through discrete stages of meaning. The narrative account of a whole human life might be consistent with breaking a life into chapters, but if the chapters were to bear no relationship to the meaning of earlier chapters, later pages and the story as a whole then the book that would constitute a life would be incoherent. It would be extraordinarily difficult to decide where in the book, at which page/age, such chapters might begin and

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<sup>91</sup> Daniel Callahan, Setting Limits: Medical Goals in an Aging Society, op. cit., p. 40.

end and surely if such divisions can be meaningfully made they would be made according to the circumstances that befell the protagonist and not by bureaucratically inspired and artificially imposed disruptions that would end the middle-age chapter at page, 64 364/365 and begin the old-age chapter at 65. Division into chapters, according to circumstances which befell the protagonist, would be retrospective and a posteriori - meaningful chapters could not be predetermined by any a priori method of division. Of-course, the last chapter, whenever it might begin, ends with death. Callahan finds this significant. We need to recognize, he claims, "that old age is the last phase of life, that it cannot go on for long, and that death is on its way".<sup>92</sup> On the contrary, if what is usually taken to be old age begins at age 65, it can go on for thirty or forty years - this is a long time . It is an extraordinarily long time if it is to be 'served' by withdrawing from society and preparing for death:

While disengagement is probably not the right term or theory, there is good reason to take some degree of withdrawal from the affairs of the world as good, a way of recognizing the ultimate falsity of seeing old age merely as a continuation of earlier stages of life...Death is a reality, and it deserves time for preparation, not merely for the filing of a "living will".<sup>93</sup>

How much time does one need to prepare for death? A week? Three months? Thirty years? How does one prepare for death? What is it that one is

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<sup>92</sup> Daniel Callahan, *ibid*, p. 49.

<sup>93</sup> Daniel Callahan, *ibid*, p. 36.

preparing for? Shouldn't one's will have been prepared and one's affairs conveniently ordered prior to age 65? Isn't the question of the meaning of death the same as the question of the meaning of life and isn't this a question, the answer to which is formulated throughout the quest for the good for man, throughout the narrative story that comprises a whole life? Wouldn't it be somewhat irresponsible to defer such questions to old age?

Death necessarily marks the end of the whole life, the entire story of every human being. The recognition of this limit surely informs our quest for 'the good for man' throughout the conscious portions of that quest. We are not trees blooming and bearing fruit, oblivious to the winter yet to come. The fact of decline and death is not news that hits our front page at age sixty-five. To suggest that preparation for death is to begin in old age is to encourage evasion of the subject of one's own death during younger years - an evasion that Heidegger believed precluded "authentic living". Anticipation of death as a certainty for oneself, a certainty "that it is possible at any moment"<sup>94</sup>, permits an impassioned embrace of life that has been liberated from illusion:

Anticipation, however, unlike inauthentic Being-towards-death, does not evade the fact that death is not to be outstripped; instead, anticipation frees itself *for* accepting this. When, by anticipation, one becomes free *for* one's own death, one is liberated from one's lostness in those possibilities which may accidentally thrust themselves upon one; and one is liberated in

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<sup>94</sup> Martin Heidegger, Being and Time, Translated by John Macquarrie and Edward Robinson, Harper & Row, New York, 1962, p. 302.

such a way that for the first time one can authentically understand and choose among the factual possibilities lying ahead of that possibility which is not to be outstripped.<sup>95</sup>

It seems arbitrary and misguided to suggest that old age is the appropriate time to face up to the certainty of death and to act accordingly. The meaning of life/death and the implications of this meaning for living a good life is probably one of the most profound and contentious problems addressed by philosophy. It is arrogant, if not absurd, to suppose that it should carry more relevance for the elderly than for the young and to claim that different behaviour is required of the elderly because of it.

Not only does this life-stage perspective fracture the concept of a whole life and underestimate the import that death has throughout life, it encourages an inter-generational perspective that permits the peculiar view that the virtue of old age is servitude. Not only should the elderly withdraw and prepare for death, according to Callahan they should serve the young:

If the young are to flourish, then the old should step aside in an active way, working until the very end to do what they can to leave behind them a world hopeful for the young and worthy of bequest. The acceptance of their aging and death will be the principal stimulus to doing this. It is this seemingly paradoxical combination of withdrawal to prepare for death and an active, helpful leave-taking oriented toward the young which provides the possibility for meaning and significance in a contemporary context.<sup>96</sup>

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<sup>95</sup> *ibid*, p. 308

<sup>96</sup> Daniel Callahan, Setting Limits, *op. cit.*, p. 43.

I believe this combination of withdrawal and servitude is not merely paradoxical, it is a contradiction. The formulation of this 'paradox' is not the result of sincere metaphysical struggle as the paradoxes of Zeno were. This formulation is part of a devious attempt to portray elderly people as a group who do not deserve to be saved and should not want to be saved. To serve others in the public domain surely requires engagement with, not withdrawal from, public life. The contradiction is not alleviated by Callahan's attempt to characterize 'active withdrawal':

To age with grace is to accept decline and loss, to accept the reality that one's life is coming to an end, to understand that a final attempt must be made to make sense of oneself and one's place in relation to those who went before and those who will come after. This need not be a wholly passive self-examination, or preclude an active engagement in the life around one: "disengagement" can be understood in an active sense. The great danger is self-absorption...<sup>97</sup>

Obviously, by "active withdrawal" Callahan does not mean that people over 65 should go and sit on a mountain-top and seek eternal wisdom. Neither does he mean withdrawal from family obligations or from political participation, which he considers important but not distinctly meaningful activities of old age. One is prompted to ask, withdrawal from what? Probably the paid work-force.

Callahan does not explicitly say this, but he does suggest that meaningful

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<sup>97</sup> Daniel Callahan, *ibid*, p. 50

activity for the elderly does not consist in "the search for their own security" <sup>98</sup>.

The other possibility is that Callahan has in mind some sort of spiritual withdrawal from self, from self-absorption. He doesn't want the elderly "turning inward" <sup>99</sup> as they prepare for death, he doesn't want them to think in terms of "it's my turn", he wants them to reflect, rather, on "the larger cycle of generations". This kind of withdrawal from selfhood is a search for spiritual transcendence of bodily preoccupation that is meaningful in many religious traditions. For those to whom it is meaningful, it is not an ideal associated exclusively with old age. In a secular society, it is a largely bankrupt notion having more to do with self-annihilation than self-transcendence. This is not the right century, nor the right world sphere to argue for a moral duty to transcend.

This is also the wrong time and the wrong place to extol a group virtue of self-sacrifice for the common good as a final solution to health care problems. Our memories may be short, but they're not that short. How exactly are the elderly to serve the young and future generations in Callahan's world? The answer is hard to find in the early pages of Setting Limits. The extent to which elderly people assist their families has been well documented in recent gerontological literature - provision of childcare, living space, income and advice - and Callahan notes this. He even notes that "there is evidence to suggest

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<sup>98</sup> Daniel Callahan, *ibid*, p. 49.

<sup>99</sup> Daniel Callahan, *ibid*, p. 50.

that within the family, the elderly may give more assistance than they receive"<sup>100</sup>. This kind of service, however, fails to meet whatever criteria Callahan thinks necessary to give old age a unique meaning. It counts for something, but it's not enough. Callahan's elaboration of the meaning of old-age is bound up with some fuzzy notion of withdrawal and with service to the young which is wider than providing assistance to one's family: "The elderly, if they want to find a larger meaning, need to serve the young in the larger, public society as well".<sup>101</sup> This public service, whatever it may be, must be something that only the elderly can provide: "Many services and benefits provided within families by the old are not a kind that only an older person could provide;"<sup>102</sup> What such service amounts to is left elusive in the beginning of the book where it is said to have to do with setting an example, of providing a model for the young, of giving them a perspective which they lack about the 'cycle of generations', the 'swift passage of time'. One cannot perform this duty by interaction with one's own grandchildren, something more public is required, but what? Perhaps the elderly are to set themselves up on boxes at Speakers' Corner and rave and ramble on about the endless succession of generations, that come and go and are gone, now here, now

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<sup>100</sup> Daniel Callahan, *ibid*, p. 44.

<sup>101</sup> Daniel Callahan, *ibid*, p. 44

<sup>102</sup> Daniel Callahan, *ibid*, p. 44



there, now nowhere, marching ever onward to the ineluctable rhythm of time,  
on, and on, and on.....:

What is it that *only* the old can provide the young, that which is irreplaceable in their contribution? *Only* the aged can provide a perspective the young need if they are properly to envision their own lives: that of the cycle of generations and its import for living of a life. The young may be indifferent to that perspective; the elderly may have to struggle to make it known. What the old know, though too poignantly at times perhaps, is that the generations come and go and that time increasingly marches on, and on, and on, all too soon passing us all by.<sup>103</sup>

This impoverished construction of the meaning of old age is an insult to the elderly, the middle-aged and the young. The latter groups are not so slow-witted that they are unable to reflect upon such things courtesy of their own experience and a few books. The elderly in providing such public service would probably find their inane pontifications the source of an even more expeditious relegation to nursing homes than now befalls them. This attempt to generate such an inelegant *raison d'être* for the elderly is a solicitous contrivance intended to perform another service: to solve the problems plaguing our health care service. The elderly, it turns out, can serve the young and future generations by compliantly allowing themselves, as members of a distinct group, to be branded with "do not save" and herded into cattle-cars that expeditiously remove them from the realm of equal concern and compassion.

Callahan borrows from, and elaborates upon, a passage by F. May to list the virtues which are required for this expedition into no-man's land:

...*courage* in the face of decline and death; *humility* in response to progressive loss and the humiliation of body and dignity that it can bring; *patience* out of a need to take control of oneself when the loss of control begins to sway; *simplicity* as a way of traveling light; *benignity* (a kind of "purified benevolence") to offset tendencies to avarice, possessiveness, and manipulation; and (most surprisingly) *hilarity* "...a celestial gaiety in those who have seen a lot, done a lot, grieved a lot, but now acquire that detachment of the fly on the ceiling looking down on the human scene"...To this list I would add *vigor of spirit*, by which I mean the drive to keep going to carry out one's hope to serve the young, an impulse of dogged determination to work to the very end for a future one will not see.<sup>104</sup>

Having read this, I shall watch flies on the ceiling with renewed interest in their capacity for detached hilarity and celestial gaiety. Detached hilarity sounds like the ignoble virtue of celestial gaiety among depraved and nutty gods. Humility may be a virtue, but it is certainly not a virtue manifested in response to humiliation. Humiliation is not properly characterized as a response to the losses incurred during the aging process - surely our bodily changes do not humiliate us, surely it would be silly to find such changes humiliating. Is loss of lens elasticity in the eye humiliating? Should middle-aged people find it humiliating when they have to buy reading glasses? That loss of bowel and bladder control is experienced as humiliating is a commentary on the extent to which our society interprets human dignity to reside in bodily functions. This

should humiliate our society - we should be ashamed of ourselves and seek some nobler interpretation of what constitutes human dignity. The last thing we should be doing is entrenching this impoverished account of humiliation by acknowledging it as the proper source of group-humility. Patience and humility are biblical virtues. They may be meaningful in some religious traditions, but they do not carry the kind of universal validation required to inflict them on a certain group who share nothing more than their age in common: "...in the only place in Aristotle's account of the virtues where anything resembling humility is mentioned, it is a vice, and patience is not mentioned at all by Aristotle".<sup>105</sup>

There is reason for Nietzschean skepticism about the virtue of self-sacrifice, or 'vigor of spirit' as Callahan, evasively, calls it. The skepticism results from seeing that a call for self-sacrifice on the part of the elderly issues from the antithesis of that virtue - a desire for advantage for the young. The ideal of self-sacrifice issues from a motive which is its contradiction:

Praise of the selfless, sacrificing, virtuous - that is to say, of those who do not expend all their strength and reason on *their own* preservation, evolution, elevation, advancement, amplification of their power, but who live modestly and thoughtlessly, perhaps even indifferently or ironically with regard to themselves - this praise is in any event not a product of the spirit of selflessness! One's 'neighbour' praises selflessness because *he derives advantage from it!* [...] Herewith is indicated the fundamental contradiction of that morality which is precisely today held in such high esteem: the *motives* for this morality stand in antithesis to its

*principle!* That with which this morality wants to prove itself it refutes by its criterion of the moral! [...] <sup>106</sup>

There is reason to be wary of accounts that call for group self-sacrifice.

Invariably such self-sacrifice serves the interests of other groups, or the rest of the community. The sacrificial altar, in such instances, stands before nothing more divine than the interests of other human beings - those who worship there enjoy a feast that only gods should eat. No doubt there is something laudable about self-sacrifice, but few would assert that it is an obligation, much less an obligation required differentially of a particular age group. Rather, when self-sacrifice is admired, it is held to be a supererogatory act.

### 3.4 Conclusion

In this chapter four types of ageism have been distinguished and analyzed. It has been argued that the criterion used in each type of ageism to justify inter-personal or intra-personal discrimination carries no moral relevance. Human beings cannot be plotted on a map that measures linear time in a way which either accurately reflects their biological development, or does justice to their conscious experience. The hands of a clock cannot confer information about human beings that is relevant to how they should be treated. Age group

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<sup>106</sup> Friedrich Nietzsche, The Gay Science, from A Nietzsche Reader, selected and translated by R.J. Hollingdale, (Penguin Books, Middlesex, England, 1983), p. 101.

generalizations about the physical and psychological status of human beings provide statistical means by which to bypass confrontation with individual people who do not necessarily conform to them. The aesthetic and symbolic criteria upon which aesthetic and symbolic ageism are based have been shown to be standards too superficial to measure the poignant beauty and complex meaning of human life.

### CHAPTER III - AGEISM & MULTIPLE INJUSTICE

#### 1. COMPARATIVE INJUSTICE & AGEISM

In the previous chapter, I have shown that each of the criteria underlying direct chronological ageism and indirect functional, aesthetic and symbolic ageism is morally problematic. A person who is the victim of any one of these types of ageism can reasonably complain that she has been unjustly discriminated against in a comparative sense of justice. In the comparative sense, the injustice is unjust vis à vis the treatment received by other people, or unjust vis à vis treatment received by the same person in her past. In addition, however, the victim has suffered a noncomparative injustice. The distinction between comparative and noncomparative justice has been drawn by Joel Feinberg. I think the distinction is useful, in discussing ageism, to show how victims of ageism can be seen to be the victims of multiple injustice. In addition to being treated differentially vis à vis other people or themselves at a past time, they are treated wrongly in a noncomparative sense. Joel Feinberg provides an example of double injustice:

The sting of discrimination is most painful in cases of double injustice where it adds salt to other moral wounds. When one is a member of an enslaved minority, for example, it is the enslavement that does one the greatest wrong, but the perceived contrast between one's own condition and that of others not enslaved, let us suppose only because of their race, while adding

nothing to the primary wrong, tends to exacerbate its immediate effect.<sup>107</sup>

Unjust discrimination is a case of comparative injustice. The victim is treated differently than others (or, as I have argued, differently than she was treated in the past) for morally irrelevant reasons. The offense is an offense against reason:

Comparative principles all share the form of the Aristotelian paradigm: justice requires that relevantly similar cases be treated similarly and relevantly dissimilar cases be treated dissimilarly in direct proportion to the relevant differences between them.<sup>108</sup>

As Feinberg points out, Aristotle's principle renders some treatment absurd and other treatment, not merely absurd, but unfair:

It is *absurd* to treat relevantly similar cases in dissimilar ways, to ascribe different geometrical properties to identical isosceles triangles, or to assign unequal wages to relevantly equal workers...Individual triangles, however, have no feelings and no interests; they do not recognize pointedly selective treatment, or partiality, or exclusion; they cannot be hurt, or harmed, or treated in relatively disadvantageous ways. For those reasons discrimination among triangles is *merely* absurd, whereas discrimination that affects the balance of advantages among beings with interests and feelings is unfair.<sup>109</sup>

To see how ageist practises exemplify comparative injustice in a variety of ways, we can examine the following example:

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<sup>107</sup> Joel Feinberg, Rights, Justice and the Bounds of Liberty - Essays in Social Philosophy, (Princeton University Press, Princeton, New Jersey, 1980), p. 286

<sup>108</sup> Joel Feinberg, *ibid*, p. 278

<sup>109</sup> Joel Feinberg, *ibid*, p. 287

Suppose an age limit were introduced into the Canadian health care system which denied those over age 70 access to expensive life-saving technology. The seventy-year-old denied access might have one or more of the following complaints:

- i) Before this policy was introduced people my age were assessed, like everyone else, according to the likelihood and the extent to which they could benefit from such treatment. Using those criteria I would have been saved. I am being treated unfairly compared to elderly people in the past.
- ii) Other people my age, or older, with similar needs are able to seek treatment abroad because they have the financial means to buy such treatment. I should not be allowed to die because I can't afford to live. I am being treated unfairly compared to wealthy people. (This same complaint would be heard in a two tier system in which an age limit was introduced at the government-controlled, basic level, but where access to available technology in the second, private, market tier was determined by ability to pay.)
- iii) I am a member of a group which has been discriminated against in the past. Because of this discrimination my health has been jeopardized and I have not had fair access to the job market and a fair chance to acquire the funds necessary for the treatment I need. I am being treated unfairly compared to white males who have had every opportunity to secure the goods of their society:



Multiple jeopardy [membership in disadvantaged groups] increases the probability of having poor health and inadequate income. Being a women is the greatest disadvantage, followed by having less than high-school education (being working-class), and by being black.<sup>110</sup>

iv) There is a one-tier, government controlled healthcare system in my country and no-one has access to private markets here or abroad.

Nevertheless I am being treated unfairly compared to many younger people on whom far more healthcare dollars have been spent than have been spent on me in my younger years and are now required to save me. I am being treated unfairly compared to younger people in being denied access to equal healthcare dollars.

v) I have exercised regularly, not smoked, not drunk or eaten to excess so as not to compromise my health. The condition from which I now suffer was not self-induced. I am being treated unfairly compared to younger people who receive the benefit of expensive, life-saving technology for health problems related to unhealthy life styles.

vi) Last year I would have been given treatment had I needed it. I am not accountable for my aging, I could not avoid becoming seventy. The only way in which I am relevantly different than I was last year is that I now have healthcare needs which I did not have then. I am being treated unfairly compared to the

way in which I would have been treated last year had I then had the same needs that I have now.

vii) Millions of dollars are being spent on college and university education, on welfare payments and on the prison system. I have never used these funds. I am being treated unfairly compared to students, welfare recipients and criminals who have received a greater share of society's funds than I now require to save my life.

It should be obvious from this example that the claim that an age criterion in healthcare would treat people equally over the course of their lives is not equivalent to the claim that such a policy would be just. Equal treatment is not a synonym for justice. A tyrant may treat all her citizens equally badly. It is claimed by Callahan and Daniels that an age criterion in healthcare would treat people equally over the course of their lives. This would be true if everyone in society lived to precisely the same age, say 80. For seventy years of their lives they would receive equal access to the benefits of healthcare, for ten years they would equally suffer the arbitrary tyranny of the age criterion (though, of course given the absurdity of the example, they wouldn't die as a result of it). But in real life, many people die before reaching the age at which they are to be denied treatment. In what way, then, can access/denial of access be said to have been distributed equally across lives? Is a policy just when its burdens are not distributed equally? It might be claimed that those who fail to equally

experience the burdens of such a system are dead and that those who do experience the burden of denial have an advantage in having lived longer. This is a poor justification for an unequal state of affairs. Suppose a society were to invoke an age criterion for access to food because supplies were limited. The statement 'I'd rather be dead than unfed' would make much sense under such circumstances. Even if the pain of starvation were alleviated by sufficient doses of morphine, the seventy-year-old person left to die in such a society might well wish she had died naturally before experiencing the icy blade of social death.

Even if one agrees that it makes sense to say that people have been treated equally across the course of their lives by such a policy, the equality cited is equality with respect to access to the potential benefits of healthcare and not equality with respect to an equal share of actual benefits. It might be claimed that what is being distributed equally to all citizens is the opportunity to live "a full biographical life span" (Daniel Callahan), or the opportunity to maintain "normal species functioning" (Norman Daniels). These claims coalesce once their authors invoke life-span maximization for the young by introducing an age-criterion and much of Callahan's argument is vulnerable to the same criticisms I employ to undermine Daniels' thesis. This perverse claim of equality will be repudiated in the next chapter. It is sufficient to note here that there is no simple formula that spells out what ought to constitute just, equal treatment and that those denied access to treatment by an age criterion

may legitimately complain that they have not been treated equally according to a variety of comparison standards.

In the area of aesthetic ageism, middle-aged women might find themselves victims of comparative injustice when they compared their own job opportunities and the role that their appearances might play in precluding such opportunities, with those of men. The comparative injustice consists in the observation, noted earlier in this thesis, that men in our society are thought to become more distinguished-looking, or attractive with age, while women are thought to deteriorate in appearance. In addition a woman might have reason to complain that she was no longer eligible for a job for which she had once been hired. Suppose she had been a flight attendant for several years when she was in her twenties and, having raised her children, wished to step back into the same career. At the job interview she would now have the same qualifications which she once had and she would be different in only one relevant respect - she now has relevant experience which she did not have when she first applied for the position. If she does not get the job, and assuming market and competitive conditions are the same, she may rightly complain that she is now being treated unfairly compared to the treatment she received in the past. In addition she may rightly complain that she is being treated unfairly compared to other, younger women.

These examples suggest that multiple, comparative injustice can be exemplified in cases of ageism. The psychological damage done by such discrimination is likely to intensify as the comparisons compound. The middle-aged, female, would-be flight attendant has been discriminated against according to at least three comparison standards - men, past self, younger women.

## 2. NONCOMPARATIVE INJUSTICE I & AGEISM

Compounding still further the discriminatory wrongs of comparative injustice is the sense in which at least two kinds of noncomparative injustice have been committed. The distinction between comparative and noncomparative justice consists in the fact that in the former, but not in the latter, one's due is determined by reference to one's relations with other people:

In all cases, of course, justice consists in giving a person his due, but in some cases one's due is determined independently of that of other people, while in other cases, a person's due is determinable *only* by reference to his relations to other persons.

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Elaborating upon Feinberg's thesis, I now wish to examine how ageist practises can be seen to be unjust in a noncomparative sense. It is characteristic of noncomparative occasions for justice that "what is 'due' the other person is not

a share or portion of some divisible benefit or burden" <sup>112</sup>. On such occasions "it is not necessary for us to know what is due others in order to know what is due the person with whom we are dealing" <sup>113</sup>. It follows that equality of treatment is not an issue in noncomparative justice, even though it is a central element in comparative justice. What is involved in noncomparative injustice is treatment as an equal and the due consideration that is owed to persons in according them their due.

The noncomparative injustice perpetrated in cases of ageism mimics in some more fundamental way the following example of noncomparative injustice provided by Feinberg:

...if a book reviewer writes of a witty book that it is dull, or of a thorough discussion that it is superficial, or of a valid argument that it is invalid, he has not "done justice" to the book or its author. The injustice again is noncomparative. It can be discovered by anyone who reads the book in question, and depends in no way upon other critical judgements that have been made by this and other critics about other books by this and other authors. <sup>114</sup>

While Feinberg's emphasis is on the injustice of the derogatory judgment made in this example, I wish to argue that a precondition for "doing justice" to the book or its author in this example, is, to have taken the book seriously - to have read it carefully and not to have let one's judgment be misled by its

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<sup>112</sup>       ibid, p. 268

<sup>113</sup>       ibid, p. 268

<sup>114</sup>       ibid, p. 270

appearance. In the same way that a book should not be judged by its cover, people should not be judged by their appearances. To do justice to a person requires attention to the person and assessment of the facts about her which are pertinent to the judgment. There can be no such assessment, no such attempt 'to do justice to the person' when attention to the unique identity of that person is precluded by judgments that rely on statistical information or superficial aesthetic or symbolic ideals. The merits of a book or the deserts of its author are not properly assessed by attention to the age of the book, or the weight of the book, or the number of its pages, or by the statistical chances that it might be good or bad, or by ideals that are appropriate for judging the excellence or merits of a painting, a knife or a marathon. I contend that ageist practises are fundamentally unjust in this noncomparative way - they fail to measure up to the person because they do not assess that person, or give her her due, according to criteria which are relevant to what is important about her in relation to policy or judgment decisions. The victim has a legitimate complaint that she has not been treated with due respect - that she has not been taken seriously as a person.

The noncomparative injustice of ageist practises is a more serious wrong than is the comparative injustice. There is, I believe, a basic right to be treated seriously as a unique individual with a unique history, unique circumstances, unique merits, unique experience and unique needs. Receiving 'one's due',

however 'due' is to be spelled out, first requires serious attention to the 'one' whose due is to be assessed. In this sense, I am pointing to an instance of noncomparative injustice that is even more fundamental than the sense in which Feinberg discusses it and which is perhaps even more serious:

...injustice by noncomparative standards tends to be a much more serious thing than comparative injustice. The right to be given one's due, where one's due is not merely an allotment or a share, but rather is determined (say) by prior agreements or by personal desert, is a more important right than the right not to be discriminated against. If a tyrant treats all his underlings "like dogs", then the injustice done underling John Doe is far more serious than he would suffer if he were given his due but everyone else were treated "like kings". Similarly, to be punished for a crime one did not commit is a greater outrage than to be punished for a crime one did commit while others who are equally guilty are let go.<sup>115</sup>

In this discussion of the multiple injustice of ageism I have drawn from what I believe to be implicit in Feinberg's distinction between comparative and noncomparative justice. It should be noted that Feinberg confines his thesis to justice, which he defines as "giving someone his due" and his characterization of noncomparative injustice revolves around its "clearest examples" which he claims to be "unfair punishments and rewards, merit grading, and derogatory judgments".<sup>116</sup> I have tried to 'fit' the fundamental, noncomparative wrong involved in cases of ageism to the terminology of justice and to describe the wrong in terms of 'not receiving one's due'. The 'fit' is tenuous, however,

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<sup>115</sup>       ibid, p. 285

<sup>116</sup>       ibid, p. 268



because Feinberg's "clearest examples" of noncomparative injustice are a bit foggy. It seems to me that one does not receive one's due if one receives "undeservably favourable criticism", or an "A" grade for a "D" paper and yet Feinberg maintains that such cases are not cases of ordinary noncomparative injustice because the recipients have no personal grievances, "no complaint coming":

noncomparative injustice is not done to a person by the expression of a judgment that treats him better than he deserves. The "injustice" done by undeservably favorable criticism, for example, is injustice of another category: either indirect comparative injustice done to all other authors...or else noncomparative injustice of a "Platonic" or other "cosmic" kind...But such treatment is hardly an injustice to the lucky recipient of the undeserved praise. He has not been wronged; he has no personal grievance, no complaint coming.<sup>117</sup>

Yet to say of a dull book that it is witty, or of a superficial or invalid argument that it is thorough discussion, fails to 'do justice' to the book and its author in the same way that Feinberg's earlier, reverse example failed to do justice to the book and its author. Can it be the case that a necessary condition for a noncomparative injustice to be done is the recipient's dissatisfaction with the outcome? If true, this would suggest that a happy slave has not been done a noncomparative injustice by being enslaved. I wish to claim that there are instances of noncomparative injustice even where the outcomes are not obviously unjust. There is a sense in which an author is wronged by

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ibid, p. 274

undeservably favorable criticism and wronged by correct judgments which are reached by methods that haven't done justice to her work. A book with an attractive cover may be a good book, but if the book is judged to be good according to the cover and without reference to the contents, then the judgement, though correct, seems to be a case of noncomparative injustice - the author, whether happy or not with the critique, should be offended by the method used to judge her work. One is not given one's due by undeserved criticism, favorable or unfavorable. One is not given one's due by procedures which ignore what is relevant in assessing one's due even if a fair procedure would have achieved the same result. I will attempt to make this point clearer by examples of ageist practises in which the judgments and decisions reached may be correct, but in which the correctness of the outcome does not mitigate the wrong done to the person in reaching it.

It is not the case that ageism necessarily entails false "derogatory judgments" even though this is often the case. It is not the case that ageism involves "unfair punishments", because even the most ardent ageist would not wish to argue the absurdity that we are accountable for and could be wrongly found guilty of, and penalized for, our aging. It is the case, however, that an ageist practise could appear to 'give someone her due' and still be ageist. For example, it might be that a person refused medical treatment on the basis of an age criterion did not, in fact, have a reasonable claim on those resources; that

is, a medical indications policy rightly might have denied that person treatment on the basis that it would do more harm than good, or would be futile. In this example the age criterion for denial of treatment is noncomparatively unjust even though the same denial of treatment would have been the outcome of a policy, such as a medical indications policy, which was noncomparatively just. In the latter, but not in the former, the patient would have been given her due as a patient - she would have been assessed according to criteria which were relevant to the decision not to treat her. The details of her medical history and condition would have been thoroughly considered and her chances of benefitting from treatment would have been a part of a calculus that took into account individual details about a unique human being. She would have been accorded treatment as an equal with due consideration to her suffering, her hopes, her desire to live, etc. An occasion for empathy, compassion, fellow-feeling and regret would not have been preempted by a policy that avoided direct confrontation with individual suffering. She would have been treated according to criteria that were relevant to her status as an equal human being.

Less dramatic, but still instances of noncomparative injustice, are the procedures that move from age-group generalizations to correct judgments about individuals. It might be the case that 'silly old fart' is an apt description of many strangers over the age of forty. The 'sweet old man', whom one has never met, might, in fact, be a very sweet, old man who would be happy to find

himself so accurately described. The job interviewer might be correct in thinking, at first glance, that the white haired woman applying for the job lacked the quick, cognitive skills required for the job. The injustice in these examples is not found in the judgment, but in the procedure by which the judgment is made. The procedure is an offense to the person who deserves to be taken more seriously than such procedures permit. The injustice that occurs is analogous to finding a guilty person guilty, or an innocent person innocent, by an unfair trial. It is an injustice analogous to grading a paper without having read the paper.

This discussion has identified one sense in which a noncomparative injustice has been done. It is an injustice to the person who has been wrongly treated even though the victim might be said to have no complaint or the judgment or decision be said to have been correct. Such cases of injustice consist in the offensive means taken to make decisions, or judgments - means which are offensive because they do not treat persons as equals, equals who require that we attend to them in a way that is relevant to the decisions and judgments we make.

### 3. NONCOMPARATIVE INJUSTICE II & AGEISM

I will now argue that a separate form of noncomparative justice is committed in ageist practises. This is an agent-relative, rather than a victim-relative form of noncomparative injustice. Hitting the target in the examples

discussed above has been effected with a blindfold on and not as a result of exercise of those capacities that constitute excellence in human thought and action. As often as not, the target will not be hit at all - the person refused medical treatment might have benefitted from it, the silly old fart might have been a recent Nobel prize winner and the sweet old man, a member of the Ku Klux Klan. Feinberg makes some reference to this kind of injustice. He characterizes it as Platonic and "inherently vague":

The Platonic notion, as I shall understand it, is a noncomparative one. When "functions", whether of an internal psychological kind or a social kind, or a more general natural kind, are not performed by the thing or person best fitted by its (his) own nature to perform them, there is injustice done, at least from the cosmic point of view.<sup>118</sup>

I do not believe one must assume a Platonic metaphysics to make sense of the injustice at issue here. The belief that there is such injustice is compatible either with the belief that it disrupts some cosmic/divine order/purpose, or with the belief that such injustice consists in an insult to the ability of its author. The remark "you have not done yourself justice" is undeniably meaningful. As moral agents, we do not do ourselves justice by impoverished exercise of those of our faculties which are conducive to good moral perception. It is beyond the domain of this paper to attempt to argue as to the constitution of those faculties, though I suspect them to be cognitive, imaginative and emotive; it is

sufficient to note that whatever they are, they are blunted by the use of cold and simple-minded, measures, generalizations and ideals that provide a lazy-man's guide to morality. The injustice done is an injustice to the talents of the person who committed the injustice. One motivation, if it can be called that, behind such injustice may be laziness:

What then is the disposition of injustice? What is [it] to be a dispositionally unjust or unfair person?...It involves a tendency to act from some motives on which the just person will not act, and indeed to have some motives which the just person will not have at all. Important among the motives to injustice (though they seem rarely to be mentioned) are such things as laziness or frivolity. Someone can make an unfair decision because it is too much trouble, or too boring, to think about what would be fair.

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Lethargic use of cognitive and emotive resources constitutes an injustice to those faculties and this lethargy lies behind and is responsible for many ageist practises. Such lethargy may be caused by laziness. It may also be caused by apathy - a failure to be open and receptive to wonder and surprise. Age criteria, age group generalizations, simplistic aesthetic and symbolic ideals simplify the moral world and paralyze appropriate response to it; those who operate according to them in the moral sphere are rigidly indifferent to what is morally relevant about unique human beings. Measurements, calculations and simple standards of beauty and meaning might be helpful to human reason in 'trapping

and subduing the world', but they are of limited use in measuring up and doing justice to human beings. Martha Nussbaum contends that the account of human excellence which depicts human reason as a 'hunter' trapping and subduing the world needs to be balanced by an account of virtue as "plant-like":

...a picture of excellence that is shown to us in the traditional image of arete as plant: a kind of human worth that is inseparable from vulnerability, an excellence that is in its nature other-related and social, a rationality whose nature is not to attempt to seize, hold, trap, and control, in whose values openness, receptivity, and wonder play an important part.<sup>120</sup>

It is this plant-like virtue and the exercise of those emotive and cognitive faculties which this virtue facilitates that is neglected in ageist enterprises. The ageist is invulnerable to uncertainty, surprise, shock, dread, pity, compassion, perplexity in her dealings with other human beings. Simple, age-related formulae to determine merit, treatment, beauty and meaning inform the ageist's moral quest. This oversimplification of the moral world is objectionable:

...it is morally objectionable in that it commits the holder to a systematic neglect of certain features of persons - namely their separateness and the qualitative uniqueness - on which their specific personal value might be thought to rest.<sup>121</sup>

It is morally objectionable in that such over-simplification perpetrates two kinds of non-comparative injustice - one to the victim whose unique identity,

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<sup>120</sup> Martha Nussbaum, The Fragility of Goodness, op. cit. p.20

<sup>121</sup> Martha Nussbaum, "Flawed Crystals: James's The Golden Bowl and Literature as Moral Philosophy", New Literary History, (15,4, 1983), p. 33.

characteristics and value have been eclipsed by ageist practises and one to the faculties of the moral agent which have been under-utilized in her assessment of the moral other.



## CHAPTER IV - AGEISM IN HEALTH CARE POLICY

### 1. AGEISM & SOCIAL POLICY

In this chapter I will repudiate an important, recent attempt to justify an age criterion in healthcare access. Such a policy would constitute direct, chronological ageism. In the previous chapters I have argued that 'years lived' is body/clock talk that is morally irrelevant conversation because it is not relevant to personhood (Chapter II, section 2.1). A criterion for access to benefits that invokes this meaningless conception of human beings as 'containers of years' invokes an absurdity and acts in a way that is schizophrenic, fracturing its victims from their past identity by failing to unify the past person and present person in a coherent unity (Chapter II, section 2.2). In addition, it has been argued that policies which invoke an age criterion perpetrate comparative forms of injustice in which people are not accorded appropriately equal treatment in comparison with other people or with their own past selves (Chapter III, section 1). I have also claimed that age criteria are unjust in two distinct senses of noncomparative justice - they fail to measure up to the person victimized by them by not taking her seriously as a human being with a unique identity and fundamental needs (Chapter III, section 2) and they fail to do justice to the moral faculties of agents who invoke such criteria (Chapter III, section 3). As well, it has been argued that "simple equality" of

access over the course of lives is a kind of equality that is inappropriate in the sphere of human welfare and basic needs, where the relevant kind of equality is equality-in-meeting-needs (Chapter II, section 1). Further, I have undermined the credibility of aesthetic and symbolic arguments that are themselves forms of ageism and that attempt to support direct, chronological ageism in the allocation of life-saving resources (Chapter II, sections 3.2 and 3.3).

To some extent my characterization of ageism has ignored the legitimate distinction between just or moral social policies and just or moral individual behaviour. Social policies, in virtue of the vast numbers of people whom they involve and for the sake of efficient implementation and effective outcome, must abstract from the unique identities of the persons whom they affect. Moral agents, on the other hand, have a duty, *ceteris paribus*, to reflect in a more circumspect fashion about the uniqueness of the other whom their actions will affect. Nevertheless, even though policies must abstract from the uniqueness of the individual and persons should pay attention to it, there is some common ground between the justice/rightness of policies and the justice/goodness of persons. Neither a just policy, nor a moral agent should gratuitously burden persons and cause them to suffer. If suffering is implied by policy implementation or individual action, there is a heavier burden of proof required to justify the policy or the action. Amongst other things, both policy-makers and moral agents must show that the end is a necessary, moral or just end, that

there is no other, more benign means to achieve it and that the means chosen is the most coherent and fair means. At the level of social policy, an age criterion denying access to health-care benefits will cause suffering. All members of the victim group will be stigmatized as being beyond the sphere of equal concern and care. Such treatment is tantamount to being denied the status of equal citizenship and renders a solid and sustained blow to the self-esteem and feelings of personal worth of those stigmatized by it. In addition, many members of the victim group will be allowed to die when they wished to be saved and could have been saved. This will cause intense suffering. This suffering will be exacerbated in cases where the victim's past use of health-care resources has been modest and her present health-care needs could be addressed without making her overall use of resources disproportionately high. Given that most people in the disenfranchised group will be negatively affected by an age criterion, it is essential that policy-makers demonstrate that an age criterion is the most coherent and fair means to achieve savings in the healthcare system. In what follows, I will argue that age is neither the most coherent means to save health-health-care dollars, nor the most fair.

The relevant group for the purpose of saving healthcare dollars is that group, if it can be appropriately identified, which consists in "high cost users". This group has in common what is relevant to a health-care policy aimed at saving money. A fairly recent report suggests that some elderly people will be among

that group as will be smokers and alcoholics, and those with a single medical condition requiring repeated hospitalization:

On average, the high-cost 13 per cent of patients consumed as many resources as the low-cost 87 percent. Repeated hospitalizations for the same disease were more characteristic of the expensive patients...Potentially harmful personal habits (e.g. drinking and smoking) were indicated in the records of high-cost patients...Public policy programs for health insurance or cost control should include provisions based on the special characteristics of high-cost patients.<sup>122</sup>

The salient point to be drawn from this characterization of high cost users is that age alone does not predict high cost use of healthcare resources. Age is only pertinent in predicting high cost care when it is combined with other factors:

In certain diagnostic categories one might be able to predict from age, nature of first admission, sentinel medical events, and personal characteristics the cost of treatment in the next decade as well as the likelihood that the patient will ever be free of the need for repeated care. Alcoholism, certain congenital anomalies, degenerative vascular disease, spinal-cord injury, renal failure, neurologic deficits, and mental disease all fall into this predictability category.<sup>123</sup>

With respect to the fairness of age criteria as a means to save health-care dollars, there are at least two important respects in which it seems unjust to choose old-age as the cut off point for extending life-saving medical care.

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<sup>122</sup> Christopher J. Zook, Francis D. Moore, "High-Cost Users of Medical Care", The New England Journal of Medicine, (May 1, 1980), p. 996

<sup>123</sup> *ibid*, p. 1001

We are not responsible for our aging and therefore not responsible for age-related medical needs. If the need to save health-care dollars is such that certain groups must be directly burdened in the process of rationing health-care services, it would seem fairer to burden those who voluntarily assume the risk of incurring disease and disability by engaging in obviously dangerous personal habits and life-styles. Time and space do not permit me to address this complex issue here. I merely wish to make the point that it would seem fairer to withhold medical treatment from those whose medical conditions are voluntarily self-inflicted than to withhold treatment from those who are not responsible for their illnesses.

The second issue of fairness centres on the notion that age is not a measure of past use of health-care resources. In and of itself, age is a poor predictor of future high-cost use and an impossibly impoverished indicator of past high-cost use. It is unfair to refuse treatment where such treatment does not entail disproportionately high use of health-care resources over a life-time.

I conclude that health-care policies which entail suffering are required to demonstrate that the means chosen are those means which are most coherently and fairly related to the ends of the policy. An age criterion is neither the most coherent means to save money in health-care, nor the most fair means to save money.

Despite all this, and despite my arguments in the previous chapters, my claims that ageism is inherently wrong and unjust might be seen to be undermined by one argument which carries a certain intuitive appeal. The argument maintains that an age criterion in healthcare could be considered a just one if such a policy could be seen to be the prudent choice of rational and unbiased deliberators, in an original position, set the task of allocating fair shares of healthcare across the stages of their lives. To this I turn.

## 2. SYNOPOSIS OF DANIELS' "RAWLSIAN" ARGUMENT

Norman Daniels offers a provocative argument intended to show that an age-criterion in the allocation of scarce medical resources is just if prudent deliberators, constrained to assume that they will live through each stage of life and behind a veil of ignorance with respect to their age and plan of life, would choose such a policy. Daniels stipulates that the age-group problem which the deliberators are to solve is a "framed" problem - that is, other, more general problems of distributory justice in healthcare have been solved and the deliberators have a limited problem to resolve in which they are to allocate what already constitutes a "fair share" of healthcare throughout the stages of their lives. It is claimed that these deliberators are trying to resolve an issue which is an intrapersonal issue and not one which involves transfers of basic goods between persons:

By finding out what rational deliberators, operating under certain information constraints, would accept as prudent to allocate to different stages of their lives, we also discover what is fair between age groups. These deliberators work within a *frame* that limits the scope of their problem. They are to allocate fair shares of health care, or other basic goods, which means they are not trying to solve problems of distributive justice that involve transfers of goods across the boundaries between persons.<sup>124</sup>

My arguments against Daniels' account will focus on the notion of the "frame"; the account's portrayal of justice; the deliberations and prudence of the deliberators. I will demonstrate that the frame is an artifice that serves no coherent purpose, that the argument for an age criterion is not an argument that has to do with social justice, that there is bias and internal conflict in the deliberation process and that prudence would require the deliberators to dissolve their Committee on the age-group problem and go back to Rawls' Original Position to clarify their mandate.

### 3) THE FRAME - CONSTRUCTION, IMPLICATIONS AND PROBLEMS

#### 3.1 Constructing the Frame

In Am I my Parents' Keeper, Daniels sets out to solve the "age-group problem". It is claimed that this problem is "framed" by prior solutions to more general problems of distributive justice:

...we cannot solve more general problems of distributive justice in the same way we solve the age-group problem. In fact, our prior

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<sup>124</sup>

Norman Daniels, Am I My Parents' Keeper, op. cit., p. 85

solutions to other problems of distributive justice must limit or frame the age-group problem, much in the way my neighbors' legitimate boundaries frame my property and restrict my landscaping plans.<sup>125</sup>

This notion of a frame which limits the age-group problem is an obscure construction. If this frame (of prior solutions) is meant to limit or constrain what can be done to solve the age-group problem, that is not what it accomplishes in Daniels' theory. To understand this, it is necessary to look at those prior solutions to healthcare distribution which are supposed to 'frame' the age-group problem.

In his previous work, Daniels argued that Rawls' general theory of justice can be extended by including healthcare-institutions among those background institutions involved in providing fair equality of opportunity. Health has to do with deviation (through disease or disability) from species-typical normal functioning which, in turn, limits opportunity. Health-care addresses needs in terms of addressing those impairments caused by disease or disability which preclude an individual from realizing her normal opportunity range, a normal opportunity range which, in turn, is characteristic of normal species functioning:

Once we note the special connection of normal species functioning to the opportunity range open to an individual [we can] extend Rawls' view that *the subject* of theories of social justice are the *basic institutions* which provide a framework of liberties and opportunities within which individuals can use fair income-shares to pursue their own conception of the good. Insofar as meeting



health-care needs has an important effect on the distribution of health and more to the point, on the distribution of opportunity, the health-care institutions are plausibly included on the list of basic institutions a fair equality of opportunity principle should regulate.<sup>126</sup>

In addition, Daniels asserts that a normal opportunity range for an individual is to be an individualized reflection of "the normal opportunity range for a given society". The latter range is relative to key features of the society and consists in "the array of 'life plans' reasonable persons are likely to construct for themselves" <sup>127</sup>. At the level of the individual, normal species functioning serves as "one clear parameter relevant to determining what share of the normal range is open to a given individual" and the individual's skills and talents are also relevant to determining her share of society's normal range:

Impairments of normal functioning through disease and disability constitute a fundamental restriction on individual opportunity *relative to that portion of the normal range which the individual's particular skills and talents would ordinarily have made available to him*. No individual has open to him the whole normal range in any case, but only that portion reasonable in light of his skills and talents.<sup>128</sup>

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<sup>126</sup> Norman Daniels, "Health-Care Needs and Distributive Justice", Philosophy & Public Affairs, (10, No.2, Spring, 1981), p. 165

<sup>127</sup> Norman Daniels, "Fair Equality of Opportunity and Decent Minimums: A Reply to Buchanan", Philosophy and Public Affairs, (14, No. 1, Winter, 1985), p. 107

<sup>128</sup> Norman Daniels, *ibid*, p. 107-108

Thus, the general principles of justice which frame the age group problem confer entitlement to a fair share of healthcare which is to be understood in the following way:

...these shares are not really a fixed quantity of goods and services. They are entitlements an individual should have, given one's health status and given a health-care system designed so that it protects fair equality of opportunity.<sup>129</sup>

The fair equality of opportunity which the healthcare system is to protect is that portion of a given society's normal opportunity range which is open to the individual given her particular skills and talents. There is "no presumption" in the fair equality of opportunity account that "we should eliminate or level individual differences".<sup>130</sup> It should be noted that what is to constitute a normal opportunity range for a given society is "the array of life plans reasonable persons in it are likely to construct for themselves" and the range is dependent on key features about the society such as its stage of historical, technological and economic development.<sup>131</sup>

The account's notion of opportunity, as Daniels admits, is left vague. We are told that it is wider than Rawls' emphasis on access to jobs and offices and the income, wealth and self-esteem and opportunity to pursue a life plan that

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<sup>129</sup> Norman Daniels, Am I My Parents' Keeper, op. cit., p. 73

<sup>130</sup> Norman Daniels, *ibid*, p. 70

<sup>131</sup> Norman Daniels, *ibid*, p. 69

this access facilitates. We are told that it is not so wide that it necessarily entails care for the terminally ill and the severely mentally retarded. And we are told that the notion of opportunity must be age-relativized if the account is not to be guilty of a productivity bias.

To summarize, the general principle of justice which 'frames' the age-group problem is a vague principle of fair equality of opportunity which is to govern the design of the healthcare system in such a way that an individual "is entitled to a specific service only if it is or ought to be part of a system that appropriately protects fair equality of opportunity".<sup>132</sup> The key word in this sentence is "appropriately", because what is to be considered appropriate protection of fair equality of opportunity is settled by Daniels through the introduction of an age-group problem and the solutions that are generated from his account dealing with the age-group problem. I believe he begs the question of whether framing the age-group problem can be considered either a just, or an appropriate strategy for specifying the content of his very general, very abstract general principle of healthcare. I will address this issue as it arises in the following sections.

### 3.2 The Frame and Fair Equality of Opportunity

In an earlier work Daniels admitted that the notion of opportunity in the fair-equality-of-opportunity account would need to be broader than one

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<sup>132</sup>

Norman Daniels, *ibid*, p. 73

restricting its scope to access to jobs and offices. The impetus for enlarging the notion of opportunity so as to remove a productivity bias was fairness to the elderly:

If we stick with the narrower one, we immediately import a strong age bias into our distributive theory. The opportunity of the elderly to enter jobs or offices is not impaired by disease since they are beyond, as the crass phrase goes, their "productive" years. Thus fair equality of opportunity narrowly construed seems open to one of the standard objections raised against "productivity" measures of the value of life.<sup>133</sup>

This is clearly a problem of interpersonal (between-persons) justice. A general condition for formulating general principles of justice is that those general principles are a fair response to the conflicting interests of equally-situated rational and moral citizens. A general principle with respect to healthcare that is formulated without reference to the interests of all citizens who will be affected by it cannot be considered a just principle. If one accepts the Rawlsian original position as a device suitable for formulating principles of justice one can appreciate that part of the suitability of this device is that it accords with "the fundamental intuitive idea of society as a fair system of cooperation between citizens as free and equal persons"<sup>134</sup>. The only relevance of age to representation in the original position is that persons

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<sup>133</sup> Norman Daniels, "Health-Care Needs and Distributive Justice", op. cit., p. 169-170

<sup>134</sup> John Rawls, "Justice as Fairness: Political not Metaphysical", Philosophy & Public Affairs, (Vol.14, No.3, Summer, 1985), p. 239

represented there are of "the age of reason".<sup>135</sup> We can take it, then, that general principles of justice will derive from a procedure in which the interests of elderly persons are amongst those competing interests that contractors, in virtue of the veil of ignorance, must take into account without bias. The veil of ignorance ensures that each person in the original position takes "the good of others into account"<sup>136</sup> because the contractors do not know what position of advantage or disadvantage, with respect to a certain index of primary goods, they will occupy when the veil is lifted.

However, exclusive attention to the elderly having their legitimate interests recognized in the derivation of general principles underdetermines the extent of the problem which Daniels acknowledges and skews it in a biased way. Formulating the problem of a productivity bias in terms of the elderly, ignores the fact that there is a productivity bias affecting younger, medically disadvantaged persons. The interests which need to be taken into account in specifying how fair equality of opportunity is to be construed in the context of health-care are interests which cross age groups. To raise the question of what is to constitute appropriate protection of fair equality of opportunity, is to raise the question of how opportunity is to be understood in the general principle of justice for health-care. It is to raise a question which is not exhausted by raising

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<sup>135</sup> John Rawls, A Theory of Justice, op. cit., p. 146

<sup>136</sup> John Rawls, *ibid*, p. 148

it in terms of age bias. We want to know how opportunity is to be understood for people of all ages whose medical conditions are such that access to jobs and offices is permanently precluded and whose life plans must be revised in a way that reflects their changed circumstances. We can think, for example, of victims of multiple sclerosis or quadriplegia. Disease and disability follow no rules of striking by age. If the general principle of healthcare is such that it is obliged only to render those services which return an individual to her normal opportunity range, then it would place beyond the sphere of just healthcare, people of all ages whom our considered convictions tell us have a legitimate claim on the healthcare system. Many debilitating diseases and serious accidents are such that their victims can never recover their normal opportunity range. A general principle for just health-care which does not guarantee care for them would be at odds with our considered judgments. Obviously some just way must be found to determine how fair equality of opportunity is to be understood.

Daniels' solution seems to be to send the problem to a Committee of Contractors who are to solve 'the age-group problem' and whose prudence will insist that the normal opportunity range be age-relativized. When discussing the general theory that would, in his later work, end up framing the age-group problem, Daniels seemed to see age-group relativization as an emendation to the general principle that healthcare protects fair equality of opportunity. That

is, we could expect that contractors dealing with the framed age-group problem are constrained by a general principle to the effect that the design of healthcare institutions must be such that it protects the age-relativized normal opportunity range of its citizens:

...it may be possible to make the normal opportunity range relative to age. On this view, for each age (stage of life) there is a normal opportunity range, but it reflects basic facts about the life cycle and society's responses to it. Consequently, diseases may have different effects on the young and the elderly and their importance will be assessed differently.<sup>137</sup>

Exactly where this question gets settled - beyond the framed problem, or within it - is important because I believe that this is a problem of justice between persons and not one which can be appropriately resolved by something like a Committee of Contractors whose mandate is to settle the age-group problem. It is important to reiterate here that Daniels considers between-person justice to have been settled by general principles that frame the age-group problem:

My prudent deliberators, even though they use Rawlsian restrictions on prudential reasoning, cannot attempt to solve problems of justice which cross the boundaries between persons. My prudent deliberators are concerned only with the *framed* problem of justice between age groups.<sup>138</sup>

The problem of specifying the notion of opportunity contained in the fair-equality-of-opportunity account is a problem that is not exhausted by seeing it in

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<sup>137</sup> Norman Daniels, "Health-Care Needs and Distributive Justice", op. cit., p.170

<sup>138</sup> Norman Daniels, Am I My Parents' Keeper, op. cit., p. 62-63

terms of its potential for age bias. If Daniels wishes to be immune from the criticism that his between-persons account of justice contains a productivity bias, then he needs to enlarge and specify his notion of opportunity outside of the framed, intrapersonal account of justice, so that all citizens whose medical conditions render their opportunities 'unproductive' are taken into account. That his fair-equality-of-opportunity account jeopardizes provision of care to the terminally ill and severely mentally retarded suggests that his notion of opportunity is unpalatably restrictive:

Certain "hard" cases raise the issue sharply. What does asking for restoration of normal opportunity range mean for the terminally ill, on whom we lavish exotic life-prolonging technology, or for the severely mentally retarded? We are not required to pour all our resources into the worst cases for that would undermine our ability to protect the opportunity of many others. But I am not sure what the approach requires here, if it delivers an answer at all.<sup>139</sup>

The tough implications of Daniels' account of just health care are couched behind the ambiguous statement in this passage about lavishing exotic life-prolonging technology on the terminally ill. Surely, as normally understood, terminal illness is amenable only to palliative care. If one is pronounced terminally ill, the usual inference is that medical technology cannot extend life. I believe it not merely contradictory, exotic care for the terminally ill that is jeopardized by Daniels' account, but basic nurturing care and relief of suffering.

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<sup>139</sup>

Norman Daniels, "Health-Care Needs and Distributive Justice", op. cit., p.



When the normal opportunity range cannot be reinstated by such care, there is no obligation emanating from the realms of justice to provide it. A traditionally fundamental concern of health-care has been the relief of suffering. Even if Daniels enlarges his notion of opportunity so as to derive some just obligation to provide relief from suffering, such a move would not be sufficient to characterize the impact and implications of pain. There can be no doubt that pain is often so severe that the person who suffers it would prefer to be dead than to continue to suffer. Since death precludes any and all opportunities, the need to be rid of pain cannot be stated exclusively in terms of a need to recover lost opportunity. Similarly reference to lost opportunity does not exhaustively characterize the misfortune of death:

...is there any point in holding, as Daniels does, that the sole aspect of disease that is relevant to justice is loss of opportunity?...the thesis is implausible. To say that what is unjust about letting someone die for lack of health care is that it deprives him of opportunity is like saying that what is really wrong with killing people is that you are depriving them of liberty.<sup>140</sup>

The obligation of a just health-care system to relieve pain and to save lives cannot be characterized exclusively in terms of reinstatement of an individual's normal opportunity range. There is a basic right to compassionate care and relief of pain and this right should not be jeopardized by a vague opportunity

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<sup>140</sup> Lawrence Stern, "Opportunity and Health Care: Criticisms and Suggestions", The Journal of Medicine and Philosophy, (8, 1983), p. 348.

account of just health-care that leaves such care and relief beyond the pale of justice.

If the account of opportunity is widened to include such things as the opportunity to live independently, the opportunity to be free from pain, the opportunity to interact with loved ones, the opportunity to converse with others, the opportunity to experience compassion and concern, the opportunity to listen to music and read books, the opportunity to go for walks, etc., then palliative care for the terminally ill and personal care for victims of seriously debilitating disease and accident will be an obligation of a just health-care system. But then there would be no need to age-relativize the opportunity account since the widened version of opportunity would apply across age groups.

I submit that the general principle of just health-care which frames the age-group problem is inhumane and inadequate. Until it has been specified in a way which makes it clear how opportunity is to be understood and why a just health-care system has an obligation to relieve suffering for the sake of relieving suffering and to care for those whose normal opportunity range can never be reinstated, it should not serve to frame and constrain more specific problems of distributory justice in healthcare. In particular one cannot frame the age-group problem because the frame remains unspecified and contains an opportunity bias that leaves people of all ages beyond the pale of just health care. It would, therefore, be premature to jump to conclusions that an age

criterion would be a just solution to the problem of rationing health care resources.

In addition, if Daniels' fair-equality-of-opportunity account were extended to incorporate a wide and satisfactory account of opportunity, there would be no reason to accept that prudent deliberators set the task of solving the age-group problem would be constrained by a principle requiring them to allocate their fair share of health-care according to an age-relativized account of opportunity:

...health-care services should be rationed throughout a life in a way that respects the importance of the age-relative normal opportunity range. In effect, all specific allocation decisions must be constrained by this principle.<sup>141</sup>

An adequately specified notion of opportunity would preclude the need for age-relativization. The deliberators would know, given their knowledge of the general principle which constrains their deliberation, that their fair share of health-care would include entitlement to those services which protect a wide range of opportunities. This would rule out the need for much of the reasoning that takes place behind the veil of ignorance. Entitlement to institutional care, personal care and home care which is required more often by elderly people, but which is also required by younger people, would be part of the 'fair share' which the deliberators begin with. The age-group problem would be reduced to a problem of rationing given a situation of scarce health-care resources.

### 3.3 The Frame and its Constraint on Deliberations

Suppose we accept that Daniels' vague fair-equality-of-opportunity account constitutes a just solution to matters of health-care distribution between persons. Further, suppose we accept that the metaphor of the frame is coherent when it is plastic enough that the general principle of between-person justice can be modified by prudence:

I noted earlier...that the metaphor of a frame might be misleading. The reasoning I have just attributed to our prudent deliberators makes explicit how the frame has to be modified to solve the age-group problem. In general, health care institutions should be governed by a principle protecting fair equality of opportunity because health care ought to protect an individual's fair share of the normal opportunity range. Prudent deliberation about how opportunity must be protected over a lifespan, however, leads to a more specific principle for the design of health-care institutions. They must distribute health care in a way that protects individuals' fair share of the age-relative normal opportunity range for their society. This is the overarching principle that constrains all further deliberation about prudent lifespan allocation of health care.<sup>142</sup>

I now wish to argue that this "modified frame" does not constrain deliberations about the age-group problem. Fair equality of opportunity vanishes from those deliberations which result in an age criterion for entitlement to life-extending technology. A society that refuses to save anyone over seventy does nothing to protect the age-relativized normal opportunity range of that group. The standard of reasoning which guides prudent deliberators in their choice of an age criterion is "The Standard Rule":

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<sup>142</sup>

ibid, p. 76

This Standard Rule, as I shall call it, instructs prudent deliberators to maximize their expected net payoff when they face choices. It requires that they take into account not only the value of a payoff, but its likelihood or probability, and that they maximize the product of the two.<sup>143</sup>

In short, the Standard Rule is said to instruct deliberators "to maximize the expected life span"<sup>144</sup> even if, to accomplish this, they must preclude consideration to one group's fair equality of opportunity. The frame, even its modified version, collapses as a constraint upon these deliberations. Daniels does and doesn't admit this:

It is easy, however, to lose sight of the frame provided by the equal opportunity account in the argument rationing life-extending resources by age. The frame seems to play no direct role in the argument because the extension of life itself has a comparable effect on the age-relative opportunity range at any stage of life. Consequently, impairment of the age-relative normal opportunity range would not decide the particular rationing question we were discussing, even if it does have a bearing on other allocation issues between age groups.<sup>145</sup>

All Daniels admits is that the frame "seems to play no direct role". In fact it plays no role. One may conclude that the frame collapses as a structure for constraining the reasoning used to resolve the age-group problem, at least it does so whenever that reasoning pertains to zero sum rationing in which impact upon opportunity range is equal and gains to the young can only be achieved

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<sup>143</sup> Norman Daniels, *ibid*, p.89

<sup>144</sup> *ibid*.

<sup>145</sup> *ibid*, p. 95

by losses to the elderly. It is not even true, given Daniels' own analysis of the problem, to say that, impairment of the age-relativized opportunity range is considered equal by the deliberators. The deliberators place more value on the opportunity range of youth than on the opportunity range of old age where impairment of opportunity is more likely:

... it would be imprudent to count the expected payoff of years late in life quite as highly as the expected payoff of years more likely to be free of physical and mental impairment...the prudent deliberators are estimating expected payoffs, which means they should take into account the frequencies of disability and disease. They then should discount the expected payoff of later years accordingly.<sup>146</sup>

The whole point of relativizing opportunity by age was to take into consideration "the frequencies of disability and disease" in old age and to redefine the opportunity range of the elderly so as to reflect them. This strategy was intended to prevent the kind of biased deliberation epitomized in the above quotation. Either deliberators are to value equally the normal opportunity range for each life stage or they are not. If they need not, as the above passage suggests, then given any zero-sum situation in which the life span of the young can be enhanced only by diminishing healthcare protection of the normal opportunity range of the elderly, such a trade off will seem prudent.

What is there, in this account, to say that fair equality of opportunity cannot be overridden when there is a situation where life-extension for the

young can be assured only by cancelling home-care provisions for the elderly? Would not the prudent deliberator wishing to maximize her chances of attaining a normal life span, choose to cancel those home-care services? I think she would. The whole prudent point is to live as long as one can, as well as one can.

Respecting/protecting the importance of the age-relative normal opportunity range no longer plays a necessary part as a guideline for decision making. It is fair to ask what kind of frame of general principles this is that it can be modified by considerations of prudence, and then can be cast aside altogether in favour of a distributive principle that contradicts it? One cannot, without contradiction, protect fair equality of opportunity for all by denying it to some. How are we now to understand the integrity of the frame? If one elaborates Daniels' metaphor we have a situation in which my neighbours' legitimate boundaries frame my property and restrict my landscaping plans only insofar as I cannot landscape their property according to my plans. It is not the case, as I first thought when reading Daniels' account, that my landscaping plans must follow the same guidelines set by my neighbours, or be consistent with theirs. The fair-equality-of-opportunity account defines what is my plot, or fair share of land, but it does not necessarily determine what I do with that plot. In certain rationing situations, I can appeal to life-span maximization as my landscaping plan.

If the frame is not constructed so as to constrain in any necessary fashion the activities within it by an adherence to the rules beyond it, it would seem that the only limiting role it plays is that of preventing the contents of the frame from seeping into other, more general areas of justice. Recall, Daniels' remark "we cannot solve more general problems of distributive justice in the same way we solve the age group problem..."<sup>147</sup>. This begs the question of why we cannot. What is there about the frame or the framed problem that precludes a similar solution to the more general problems of distributive justice? What is it that is distinctive about the framed problem? Daniels' answer to this question is that the framed problem is necessarily different than more general problems because the former is a problem of intrapersonal justice while the latter are problems of interpersonal justice. I move, in the next section, to consider whether Daniels' characterization of intrapersonal justice is such that the distinction between intrapersonal justice and interpersonal justice is a coherent one.

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<sup>147</sup>Norman Daniels, *ibid*, p. 47



#### 4. INTERPERSONAL JUSTICE AND INTRAPERSONAL PRUDENCE

##### 4.1 Shifting Perspective: Synchronic to Diachronic and the Implications for Justice

###### i) What Appears to be at Stake

If Daniels is to maintain that solutions to problems within the frame cannot be applied to problems beyond the frame, the integrity of the frame appears to be very important. If it does not stand fast then we might expect life-span maximization to rule more general principles of justice and we can envision invasions upon the liberty of elderly people in the name of lifespan maximization of the young. We can expect goods of all sorts to be taken from them in order to serve the better life prospects of the young and a situation not unlike the Jews experienced in Nazi Germany. Confiscation of wealth, property, rights and jobs, and extermination if necessary, as a means to enhance lifespan maximization of the young would not be an implication too fantastic to contemplate. I think much of Daniels' insistence that the age-group problem is seen as a framed matter of intrapersonal justice is an attempt to deny that his account has any of these slippery-slope implications. I will argue that his worries are unwarranted because his framed account fails to exemplify social justice. If the latter criticism fails, then his worries are warranted because his notion of intrapersonal justice is such that it invites Parfit's challenge. It follows

that any solutions to the framed problem either fail to be just, or, if they are just they invite serious questions about the distinction between interpersonal and intrapersonal justice. In addition I will argue that Daniels' deliberators would, in the interests of consistency and prudence, refuse to testify against themselves; thus, no solutions to the age-group problem would be generated.

ii) Is Justice Transposed in the Shift?

How does Daniels tell us we are to understand this important distinction between interpersonal justice outside the frame and intrapersonal justice inside the frame? The first thing is we must not view the distinction from an alcoholic haze, because, when sober, we can see that the age-group problem can be reduced to, or be substituted by, the problem of individual prudence in allocating health-care resources over stages of her life:

Because of the sobering fact that we age, there is a natural convergence of the age-group problem, appropriately "framed" and our substitute problem of prudent allocation over a lifespan. From the perspective of institutions that distribute basic goods over our lifespan, transfers between age groups are equivalent to transfers within a life. The substitution of one problem for another is appropriate because, in the peculiar case of age groups, they are essentially the same problem.<sup>148</sup>

We can take from this that the age-group problem only appears to be an interpersonal problem when social justice is viewed from a synchronic

perspective. If we alter that perspective to a diachronic one, that is, if we move from a "time slice" perspective to a life-span approach, what was an interpersonal problem can be reduced to an intrapersonal one:

This way of perceiving the age-group problem, as a problem of competition between groups viewed in a slice of time, is I believe, fundamentally misleading...Justice between age groups...is a problem best solved if we stop thinking of the old and the young as distinct groups. We age. The young become old. As we age we pass through institutions that affect our well-being at each stage of life, from infancy to very old age. The lifespan approach is based on the suggestion that we must replace the problem of finding a just distribution between "us" and "them" - between groups - with the problem of finding a prudent allocation of resources for each stage of our lives.<sup>149</sup>

It should be immediately noted that some individuals get lost in this shift, namely those who do not pass through the stages from infancy to very old age. We age by moments and we don't all become teenagers, young adults, middle-aged persons, or elderly persons. The prudent interests of those who have good reason to believe they will not live through some, or most life stages and might, therefore, wish to maximize their health-care while alive get lost in the shift. Our interests on their behalf, or more Rawlsianly, our prudent interests should terminal illness befall us in our younger years, are also obliterated by this move and since this is an important aspect of social justice, it follows that Daniels' shift loses one important aspect of justice.

Daniels' solution to the age-group problem involves a shift from a perspective that looks at contemporary persons and the conflicts between them, to one which looks across a life at the stages from birth to death. The relevance of this shift to the issue of social justice is best seen by examining John Rawls' distinction between justice as social cooperation for mutual advantage among contemporary people and another problem, which lacks the condition of mutuality that characterizes social justice. A note on terminology is required here because intergenerational justice is often used to characterize what Daniels, rightly I think, calls the age-group problem. Both Daniels and Rawls use the term 'generation' to refer to "the entire body of individuals born and living at about the same time".<sup>150</sup> In this use of the term it makes sense to talk of past, present and future generations and the concept of intergenerational justice is one which invokes the notion of our (the present generation's) obligation to future generations. This is a use of the term "generation" which is distinct from its use to characterize "the term of years, roughly 30 among human beings, accepted as the average period between the birth of parents and the birth of their offspring"<sup>151</sup>. The problem of what is owed to future generations is a perspective that is diachronic - it looks forward

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<sup>150</sup> Random House Dictionary, Second Edition, unabridged, Random House Inc., New York, 1987

<sup>151</sup> ibid

in time to those unborn generations and asks what the present generation owes them. There is an important difference between social justice as an issue to do with contemporary people and justice as an issue to do with future generations - in the former, but not in the latter, we can speak coherently of reciprocity between persons and groups, trade-offs in interests can be made, less of one thing can be traded for more of another, etc. Equal moral persons are alive and equally situated with respect to having their interests, in whatever goods are to be distributed, taken into account fairly.

Equal citizenship and reciprocity, or cooperation for mutual advantage are not features of intergenerational justice. Bequests (Rawls' use of the word 'exchanges' in this context is misleading) from one generation to the next are one-directional:

It is a natural fact that generations are spread out in time and actual exchanges between them take place only in one direction. We can do something for posterity but it can do nothing for us. This situation is unalterable, and so the question of justice does not arise.<sup>152</sup>

Clearly the life-stage perspective mimics the intergenerational perspective in that at any given stage of life we can do something for the next stage, but it can do nothing for us. One claim which follows from this is that the age-group problem cannot be reduced to the intrapersonal lifespan perspective without losing, in the process of reduction, the conditions necessary for social justice to

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John Rawls, A Theory of Justice, op. cit., p. 291

obtain. The life-stage perspective, given the temporal flow from earlier to later stages, in which later stages can do nothing for earlier stages and earlier stages can, at best, make bequests to the next, not yet alive stages, mimics the one-directional flow of intergenerational justice. Any attempt to represent the various age stages as contemporaries seeking mutual advantage and resolution of concurrently conflicting interests would be nonsense. The notion of social justice is not implicated.

To return to Rawls and intergenerational justice: since parties in the original position know they are contemporaries in virtue of the "present time of entry interpretation", their interest in the present generation might lead them to refuse to make any sacrifices for their successors. Therefore Rawls adjusts the motivation condition by regarding the parties as representing family lines with ties of sentiment to the generation that follows. The analogy given to guide contractors in their deliberation about a just savings principle is that of fathers ascertaining how much to set aside for sons "by noting what they would believe themselves entitled to claim of their fathers."<sup>153</sup> I mention this because a superficial reading of Rawls might lead one to believe that he addresses the age-group problem, as an issue of social justice, in terms of what the elderly owe the young (remember Callahan). He does not. His conception of social justice is justice between contemporaries marked by the condition of mutuality.

His social justice is synchronic in perspective and not diachronic. In his diachronic discussion of intergenerational justice he rejects a utilitarian calculation for just saving because it may demand extreme self-sacrifice on the part of one generation in order to maximize advantages over the next generations. By analogy, one can assume that Rawls, even if he were to address the age-group problem in a similar way, would not require anything more of the elderly than that they benefit the young in a manner consistent with the benefits they received from the age-cohort which preceded them. Just as generational genocide is not implied by considering what is owed future generations, senicide through abandonment, is not implied by considering what the elderly owe to the young.

Social justice does not carry through to the reduced problem of intrapersonal deliberation and solutions in Daniels' account. At best, the framed problem represents prudence, not justice. At best, in the argument for an age-criterion, we are given an account of justice that one could only characterize as solitary, desert-island non-justice. One can imagine the following scenario. A woman finds herself stranded on a delightful, but deserted, desert island with insufficient resources to survive for the rest of her natural lifespan. Consequently, she prudently rations the resources available to her so as to maximize her expected lifespan. There's nothing just going on here and there's

nothing moral involved, unless, of course she ought to share her resources with the monkeys.

iii) What about Parfit?

One might wish to argue that even though social justice has been lost in the reduction of interpersonal justice to intrapersonal prudence, there is a kind of justice implicated in the life-stage account. In raising the concept of intrapersonal justice, Daniels invites the view that this sort of justice would make sense if the various age-stages could be seen as alienated parts of a whole life requiring a just distribution between them. If each stage could be viewed as psychologically alienated from the others, or if one particular stage in the far future could be considered psychologically alienated from an early one, then, according to Derek Parfit, there's a case to be made for considering such psychologically, disconnected stages to be different people. There is no "deep further fact", such as a Cartesian ego or mental substance, that explains self-identity over time. Self-identity is not a solid fact, it is a matter of degree, the degree having to do with the extent of psychological connectedness between temporally successive selves. If there is marked psychological discontinuity between stage/selves, then these stages are, in a morally and prudentially relevant way, different people. According to Parfit's revised self-interest theory:

If it is not irrational to care less about some parts of one's future, it may not be irrational to do what one believes will be worse for



oneself. It may not be irrational to act, knowingly, against one's own self-interest.<sup>154</sup>

Parfit's theory denies that prudence has to do with expressing equal concern about all parts of one's future - it is rational to discount future interests of a future self in proportion to the degree of the psychological disconnectedness between them. With respect to old age, this may have a significant implication:

On the revised theory, such acts [smoking in one's youth] *might* be irrational. On this theory, it is not irrational to have a discount rate with respect to the degrees of psychological connectedness. When I bring upon myself great suffering in my old age, for the sake of small pleasures now, my act is irrational only if my discount rate is *too steep*.<sup>155</sup>

Parfit admits that his revised theory is weak in that it cannot explain what makes a discount rate adequate or too steep, but it is not essential to solve that problem in order to see that something is required to support our beliefs that it would be wrong to harm those future selves, that cannot be described significantly as "our" selves: that is those successive selves with which our present self does not share "Relation R" - "psychological connectedness and/or continuity..."<sup>156</sup> (I leave aside an additional part of this criterion because it is not essential to the point I am making). Parfit explains our intuitions that it

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<sup>154</sup> Derek Parfit, Reasons and Persons, (Clarendon Press, Oxford, 1984), p.

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<sup>155</sup> *ibid*, p. 318

<sup>156</sup> Derek Parfit, *ibid*, p. 215

would be wrong, though not necessarily irrational, to harm those later selves who are not 'our' selves, by suggesting that we are required to extend to them the moral consideration that we would extend normally to other people. That is, from a moral point of view, our future psychologically disconnected selves, are the equivalent of other people. Therefore, it follows that "we should claim that great imprudence is morally wrong. We ought not to do to our future selves what it would be wrong to do to other people".<sup>157</sup> If this claim can be transposed into a claim about justice, then there is a legitimate sense in which, since self-identity is a matter of degree, one could consider resource allocation across psychologically alienated life-stages as a case of social justice. It all depends on how one defines the distinction between morality and justice, or better, what delineates that portion of the sphere of morality that we call justice. This is a complex issue which I cannot address here. It is sufficient to note that Parfit sees intergenerational justice as a question of morality and one which is analogous to the morality between successive selves:

If we care little about ourselves in the further future, our future selves are like future generations. We can affect them for the worse, and, because they do not now exist, they cannot defend themselves. Like future generations, future selves have no vote, and their interests need to be protected.<sup>158</sup>

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<sup>157</sup> Derek Parfit, *ibid*, p.320

<sup>158</sup> Derek Parfit, *ibid*, p. 319

If Parfit is correct, we can look at the age-stage problem in two ways. If the required degree of psychological continuity holds throughout the stages, we have a situation characterized as intrapersonal prudence over successively, psychologically connected selves. What's going on here cannot be aptly described as social justice, it is purely a prudential affair. On the other hand, if there is marked psychological disconnectedness between life stages, there is a between-person problem which must be assessed from the point of view of morality, or possibly justice. For a utilitarian, there is no distinction (the moral and the just are both determined by the calculus that maximizes some overall good) and Parfit's reductionist account of the self suggests that a lesser importance should be placed on the boundaries between persons:

If some unity is less deep, so is the corresponding disunity. The fact that we live different lives is the fact that we are not the same person. If the fact of personal identity is less deep, so is the fact of non-identity. There are not two different facts here, one of which is less deep on the Reductionist View, while the other remains as deep. There is merely one fact, and this fact's denial. The separateness of persons is the denial that we are all the same person. If the fact of personal identity is less deep, so is this fact's denial.<sup>159</sup>

From the point of view of distributive principles, Parfit's account has the following implication:

If we are Reductionists, we regard the rough subdivisions within lives as, in certain ways, like the divisions between lives. We may

therefore come to treat alike two kinds of distribution: within lives and between lives.<sup>160</sup>

With respect to Daniels' account, this would imply that his intrapersonal problem cannot be framed because any absolute distinction between interpersonal and intrapersonal justice has been dissolved. If (and this is a big IF given Parfit's account), Daniels can cling coherently to his between-person account of justice that was thought to rule beyond the collapsed frame, he is required to address the age-group problem strictly by a direct application of his general principles of justice. This would imply that the priority of the fair equality of opportunity principle is such that any further distributory principles could be invoked only if they were to enhance fair equality of opportunity for those who were most disadvantaged with respect to opportunity:

The priority of fair equality of opportunity, as in the parallel case of the priority of liberty, means that we must appeal to the chances given to those with the lesser opportunity. We must hold that a wider range of more desirable alternatives is open to them than otherwise would be the case.<sup>161</sup>

In particular, "Infringements of fair equality of opportunity are not justified by a greater sum of advantages enjoyed by others or by society as a whole".<sup>162</sup> It follows that Daniels cannot invoke an age-criterion in order to maximize overall

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<sup>160</sup> Derek Parfit, *ibid*, p. 333-334

<sup>161</sup> John Rawls, A Theory of Justice, *op.cit.*, p. 301

<sup>162</sup> John Rawls, *ibid*, p. 302

chances of attaining a normal lifespan without jeopardizing the priority-standing of the principles of liberty and opportunity.

According to my preceding arguments, either the reduction from a between-person problem to an intrapersonal problem loses social justice in the transition and the framed problem cannot have implications for social justice, or the distinction between interpersonal and intrapersonal justice is so problematic that no framed problem is possible.

If Daniels wishes to maintain that intrapersonal/within-life distribution of resources is a matter of justice, then this requires viewing stages of life as discrete, separable and contentious spheres and the basic unit of justice is no longer a complete life, but a part of a life. This begs the question of personal identity through discrete life-stages and invites Parfit's challenge. Daniels recognizes that Parfit's reductionist account implies that "...the boundaries between persons may not be morally important" and he admits that Parfit's conclusions threaten a central assumption of his work:

I have assumed that the boundary between persons *is* morally significant and that it is always problematic how we are to aggregate or balance benefits and burdens across those boundaries. Consequently, I sought the theoretical advantage that would result from reducing the interpersonal problem of justice between age groups to an intrapersonal problem of prudent allocation over a lifespan.<sup>163</sup>

However Daniels' attempt to respond to this issue fails to recognize that his own account of intrapersonal justice raises serious questions about personal identity because it splits persons into discrete, separable, contentious age-stages. If there can be such a thing as justice between different stages of the same person's life, if one is to view stages of one's own life as somehow contentious, this requires fracturing a whole life into bits and pieces. Yet Daniels' reply to Parfit suggests that such a fractured view of self is not necessarily a prudent or a moral way to go about constructing a conception of persons:

Metaphysics may be the bedrock, but it underdetermines what kinds of structures - including persons - we can and *ought* to build on it. The "ought" here may be prudential, capturing what rational or reasonable persons should do. Or it may be moral. Parfit's claim that only Relation R matters and that personal identity does not would have to be rejected.<sup>164</sup>

If Daniels is correct and if there are prudential and moral reasons requiring that our concept of persons include a stronger view of personal identity than Parfit allows, it seems wrong-headed to invoke a notion of justice that undermines personal identity by fracturing it into discrete stages.

In addition, Daniels accepts the following view:

The identity of a person is a fact that supervenes not just on a base of facts about connectedness and continuity but on a base

that includes facts about the ways in which others view and treat  
us.<sup>165</sup>

If personal identity is partially determined by our relations with other people, it is difficult to understand how Daniels' intrapersonal account of justice does not undermine his own conception of personal identity. A prudent deliberator's perspective on her life stages does not take into account the views of others on those stages, views which connect them and partially determine self-identity over time. It is, perhaps, this aspect of personal identity, that it is, in part, determined by one's relations with others, that makes social justice more than a matter of prudent rationing over a lifetime. There are other people who care and are concerned and who would not want a person treated in ways which her fractured, age-stage, intrapersonal prudence might dictate. Their perspective of her is here and now, a present-moment pulling together of retrospective strands of her life into personal identity. If she would introduce an age criterion to maximize her life-span, they would not want to see her, here and now, suffer its consequences. Further, with respect to the person whose personal identity is in question, identity over time is partially a function of retroactive work, of gathering oneself together by gathering memories together. It is interesting that this aspect of self-identity has been explored primarily in gerontological work on

the phenomenon of 'Life Review' amongst elderly people. Life review was characterized by Robert Butler:

[It is] a naturally occurring, universal mental process characterized by the progressive return to consciousness of past experiences, and particularly, the resurgence of unresolved conflicts; simultaneously, and normally, these revived experiences and conflicts can be surveyed and reintegrated. Presumably this process is prompted by the realization of approaching dissolution and death, and the inability to maintain one's sense of personal invulnerability.<sup>166</sup>

This process of retrospective reintegration is, I contend, an essential element in self-identity and it is an element that is not represented in Daniels' atemporal, original position. There is a tension between Daniels' resistance to Parfit's challenge to personal identity and Daniels' own, characterization of intrapersonal justice which loses important elements of self identity.

Finally it should be noted that Daniels has extended Rawls' account of justice into metaphysical realms where Rawls would fear to tread. In considering the issue of self-identity and its implications for political theory, Rawls has this to say:

This latter problem raises profound questions on which past and current philosophical views differ, and surely will continue to differ. For this reason it is important to try to develop a political

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<sup>166</sup>

Victor Marshall, Last Chapters: A Sociology of Aging and Dying, (Wadsworth Publishing Company, California, 1980), p. 88.



conception of justice which avoids the problem as far as possible.<sup>167</sup>

Fundamental disagreement about the foundations of a conception of justice does not help to make the conception of justice a compelling one.

iv) The Shift and Important Matters of Social Justice

The shift to a diachronic perspective on the age-group problem fails miserably as a means to reflect a major consideration of justice in the synchronic perspective. If we belong to a younger age group, we owe much of our material wealth, much of our technological advance, much of our great literature and art, much of our sense of identity, much of our sense of justice, much of the help we receive in every day living, much of our healthcare advances, to many members of the elderly group. We owe many members of that group much in return. This kind of mutual reciprocity is unmirrored in the reduction of the age-group problem to the life-stage problem. There is a big moral blind-spot in Daniels' account.

Further this shift ignores an essential matter of fairness in rationing health-care resources. The synchronic perspective allows a comparison between contemporary persons of relative use of healthcare resources. As was pointed out before in this paper, many elderly people have not used a

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John Rawls, "Justice as Fairness: Political Not Metaphysical", op.cit., p.

disproportionately high amount of resources in the past and it would seem unfair to allow them to die when allowing them to live would not constitute a disproportionate drain on society's resources. The scales of justice are tipped unfairly in favour of the young in the diachronic perspective.

Finally the shift ties justice to a feature of persons for which they are not responsible and asks them to prudently ration resources in terms of that feature. The synchronic perspective, in addressing issues of merit and desert in between-person justice might rule out a criterion for rationing which is undeserved and suggest some other criterion that is tied to voluntary health risk.

## 5. INTRAPERSONAL PRUDENCE & THE DELIBERATION

### 5.1 Introduction

In this section it will be argued that the deliberations of the contractors addressing the age-group problem are neither just nor prudent. I will assume in this section that Daniels can defend the idea that social justice transfers from the age-group problem to intrapersonal justice.

### 5.2 The Bias In the Framed Problem

Having imposed a diachronic perspective that asks us to regard the age-group problem as a problem that has to do with intrapersonal allocation across stages of a life, Daniels now asks his deliberators to imagine that they are to

live through each life stage according to the principles they choose. This is a condition upon their deliberation that is supposed to render them unbiased between life stages because they don't know their age and, thus, which stage they will find themselves in when the veil of ignorance is removed:

"...we make our rational choosers assume they might live through each stage of life under the principles they choose. In effect, they are ignorant of their age: they cannot assume they have already lived through certain stages or that they will die young and not live through later ones".<sup>168</sup>

However, the constraint of "ignorance of age" does not serve to make the deliberation unbiased about old age. Maximization of well-being over the life-span requires that prudent deliberation about allocations to various life-stages must be such that a prudent consideration in the deliberation is the one-directional, temporal flow from earlier stages to later ones. That this involves a bias in favour of early stages is suggested by the fact that given a situation of scarce resources, the prudent deliberators do not consider introducing an age criterion that withholds life-extending technology from their earliest age-stage. Surely, with respect to opportunity, there is something that could arguably be called mental and physical impairment in our infancy and early childhood and 'it would be imprudent to count the expected payoff' of years early in life 'quite as highly as the expected payoff of years more likely to be free of physical and mental impairment'. Given that the fact of such impairment is more certain in

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<sup>168</sup>

Norman Daniels, Am I My Parents' Keeper, op. cit., p. 75

infancy and early childhood than it is in old age, one wonders why, if the deliberators are truly impartial, if they are truly "neutral with regard to time", they choose a late age criterion rather than an early one:

...our prudent deliberators must draw these conclusions about savings because the age-relative opportunity principle does not let them discount the value of years late in life simply in virtue of their being later. The theory of prudence they begin with requires that they maximize well-being over a lifespan in a manner that is neutral with regard to time.<sup>169</sup>

The requirement to maximize well-being over a lifespan is at odds with the requirement to be neutral with regard to time. When rationing is required, prudence dictates that the earliest stages must be given preferential consideration over later ones. The import of this is that there is, if not exactly an age bias, then a time-flow bias in Daniels' account, such that earlier stages will always receive preferential treatment over later stages and the last stage will be the most vulnerable with respect to rationing strategies.

To show how important the issue of a bias in favour of early age stages is from the point of view of justice, I will turn, briefly, to Rawls' theory.<sup>170</sup>

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<sup>169</sup> Norman Daniels, *ibid*, p. 78

<sup>170</sup> It is important to note that when I discuss Rawls' theory I ignore Rawls' qualification that it is intended only to apply to justice with respect to the basic structure of society and those institutions which compose it. Nevertheless, I have to abstract from Rawls' account certain ingredients of the original position which I think he would consider essential to the derivation of just principles for more intricate states of affairs, such as healthcare policy. Neither do I wish to imply that Daniels considers his original position in his framed account to be identical to Rawls' account of the original position. He does not, and he makes this explicit in Am I My Parents' Keeper.

The self interest of the contractors in Rawls' original position centres on attaining certain primary goods - liberty, opportunity, wealth, income and the bases of self-respect or self-esteem. (In passing, I should note that Daniels' account fails to give due consideration to Rawls' emphasis on the importance of self-esteem and that I will be addressing that issue shortly). The parties are forced to protect themselves from the worst contingencies of life and they think in terms of optimizing the worst outcome that could befall them when the veil is lifted and they join the real world. Rawls' contractors reason according to the maximin rule that "ranks alternatives by their worst possible outcome: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others."<sup>171</sup> In addition they have no incentive to "suggest pointless or arbitrary principles":

For example, none would urge that special privileges be given to those exactly six feet tall or born on a sunny day. Nor would anyone put forward the principle that basic rights should depend on the color of one's skin or the texture of one's hair. No one can tell whether such principles would be to his advantage...From the standpoint of persons similarly situated in an initial situation which is fair, the principles of explicit racist doctrines are not only unjust. They are irrational.<sup>172</sup>

It is true that Rawls does not specifically mention age here, but I think it is consistent with the fact that time of entry to the original position is "any time

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<sup>171</sup> John Rawls, A Theory of Justice, p.152-153

<sup>172</sup> John Rawls, *ibid*, p. 149

(during the age of reason) for living persons" and consistent with the rationality of the parties, to conclude that contractors have no incentive to introduce age-criteria into their policies, because in not knowing whether such a policy could be to their advantage, they recognize that it could be to their disadvantage should they find themselves old when the veil is lifted. Even though the parties are moved by consideration of self-interest and even though they are mutually disinterested, they are not appropriately called egoists. Ironically, benevolence is indirectly implicated in Rawls' original position:

Now the combination of mutual disinterest and the veil of ignorance achieves the same purpose as benevolence. For this combination of conditions forces each person in the original position to take the good of others into account. In justice as fairness, then, the effects of good will are brought about by several conditions working jointly. The feeling that this conception is egoistic is an illusion fostered by looking at but one of the elements of the original position.<sup>173</sup>

The contractors in Rawls' original position are required "to take the good of others into account". Another way of saying this is to say that in adducing their principles of justice they are forced to take the perspective of those who potentially will be most disadvantaged by the principles they choose. They choose the maximin rule because it makes the worst off better off than they would have been should the contractors have chosen a different rule to guide their policy choices.

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<sup>173</sup>

ibid, p. 148

When we examine Daniels' account of intrapersonal justice, we find a preference for the interests of early age-stages and a diminished concern for the interests of the last stage when rationing strategies are required. There is some prudent interest in the last stage on the part of the deliberators, but it is an interest that is expendable when prudence dictates maximizing the lifespan. There is only a very qualified sense of benevolence towards the old age stage implicated in Daniels' account - there is good will only so long as such good will is compatible with the interests of the other stages. When such compatibility is absent the worst off, in Daniels' scheme, are allowed to die off. Sincere, time-neutrality with respect to age-stages would not so clearly entail life-span maximization as the appropriate rationing strategy. Rawls' maximin strategy might seem to be, under conditions which were not temporally biased in favour of earlier stages, the most compelling rationing strategy. An equal concern for all stages would be consistent with rationing strategies such that the worst off with respect to health are made better off than they would have been had the deliberators chosen any other rationing strategy. Life-saving treatment, palliative care and nurturing care for seriously debilitating conditions, at any stage of life, might well be seen as needs of the worst-off with respect to health and prudent deliberators would choose a policy that best addressed these needs.

A maximin strategy would seem to be more consistent with the assumption held by Daniels' deliberators that they will live through each stage of life. If they are to assume this, as Daniels stipulates they must, and if they are sincerely neutral with respect to time, they will be equally concerned about worst health-care predicaments that may befall them at any stage and they will act so as to assure themselves of appropriate care under those conditions.

### 5.3 The Tension Between Constraint and Deliberation

Daniels constrains his deliberators to assume that they will live throughout each stage of life. How can his prudent deliberators consistently assume this and at the same time countenance policies which they know will limit their chances of living through any particular stage?

### 5.4 The Incompatibility between the Deliberators' Knowledge and their Ignorance

Daniels allows his deliberators sufficient information that his stipulation that they must imagine themselves to live through each stage of life, as a motivation for unbiased assessment, is inconsistent with what knowledge they have. They have information about the demographic facts about their society and, therefore, information from which they can estimate the probability that they will turn out to be old when the veil is lifted and their policies are in place.



There is (given current demographic data) about a 1 in 6 chance that they will find themselves, beyond the veil, to be over age 65. The motivation to assume they will live through each life stage is at odds with the information given to the deliberators:

Although deliberators behind the veil of ignorance do not know their age or plan of life, they do have knowledge about their society and about health-care technology. For example, they must know important facts about the disease/age profile of their society, or they cannot begin to make prudent choices about allocation over the lifespan. They must also know about its level of technological development and its pattern of economic growth. They must know important demographic facts about their society, for example, that expected longevity has been increasing at certain rates for certain reasons. And they must know about basic economic and sociological trends that have a bearing on these demographic facts.<sup>174</sup>

Daniels could try to argue that this motivational assumption, though inconsistent with the deliberators' knowledge, is simply a requirement of reasoning in the original position, which like Rawls' conditions that contractors feel no envy and have ties to following generations, is an assumption required by the theory. I do not think it works. Whatever else we are to believe, we must believe that the contractors are proceeding rationally and that they cannot ignore the probabilities indicated by the information they have been given. I cannot attempt to determine what impact those probabilities would have on rational and prudent deliberation, it is sufficient to indicate the inconsistency between the

knowledge Daniels allows the deliberators and the assumption of ignorance with respect to their ages.

There is a similar problem with respect to knowledge of life expectancy. In Rawls' theory, hypothetical deliberators must take into account perspectives of social positions which are guaranteed to exist in the real world once the veil of ignorance is lifted. The worst off and the best off groups - those who will be advantaged by, and those who will be disadvantaged by, the principles the deliberators choose - will exist and the deliberators know they will be in one of those groups. Unlike Rawls' contractors, Daniels' hypothetical deliberators have no such guarantee and, most importantly, they know it. They are deliberating about some stages of life, which they know when the veil of ignorance has been lifted, may not turn out to be a part of reality. This point does not necessarily entail the absurdity that they might find themselves dead, but it does entail that their deliberations need to take into account that there is a pretty good chance that they will not live through some of the stages about which they deliberate. The only prudent way to handle this state of affairs is to request personal information that might assist one in determining one's chances of living through each life stage. Prudence requires that one be informed, for instance, of whether or not one has a terminal illness at an early stage, whether one has certain hereditary factors that are likely to preclude living to a ripe old age, etc.

From a prudential point of view, knowing what these deliberators do about life expectancy and knowing how important information about genetic, social and life-style predictors are to calculating their chances of attaining the average life expectancy, I believe prudence would require that, in the absence of this essential information, they plead 'the fifth amendment' and refuse to testify against themselves at the mock trial which Daniels has contrived. I suggest that, since they must be aware that medical disasters do not strike uniformly amongst the population and that people are differentially and disproportionately victimized by disease and disability, prudence would suggest that they dissolve their Committee on the age-group problem and request a meeting with the Original Board of Contractors to re-evaluate the way in which these matters are to be resolved.

#### 5.5 The Deliberations are Short-Sighted

If conditions of scarcity require deliberators to maximize the life span and if it is seen by them to be just to transfer resources from the elderly to the young, an age criterion denying access to life-extending technology may not be the most effective or even the most humane means to accomplish this end.

The deliberators are assumed to have general, but not personal facts. They do not know their age or plan of life, but they do know important facts about the disease/age profile for their society, about medical advances in technology, about the reasons for increased longevity, etc. It is fairly safe to

assume, then, that these deliberators are sufficiently informed to know that denial of life-extending technology by age will not be the most effective means by which to maximize their chances of living a normal lifespan. It has been suggested that they could almost certainly guarantee that they would reach a normal life span in reasonably good health by transferring most healthcare expenditures from old age to youth and middle-age:

The elderly now use nearly a third of all health care. Were these resources reassigned to the younger and middle-aged groups, the probability would be dramatically increased that all or virtually all these persons (except the worst-off newborns and those catastrophically injured or killed outright in accidents, homicide or suicide) would not only reach a normal lifespan but reach it in reasonably good health.<sup>175</sup>

Given this, Battin suggests that prudent deliberators might choose to leave the elderly healthcare resources to ensure "minimal home hospice care and inexpensive pain relief" and simple [cheap] forms of treatment for acute illnesses.<sup>176</sup>

Part of the problem which prudent deliberators must face is the fact that denial of treatment does not necessarily translate into the expeditious death of the patient. While denying the elderly life-extending technology would sometimes result in a quick death, it would also often result in a prolonged

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<sup>175</sup> Margaret P. Battin, "Age Rationing and the Just Distribution of Health Care: Is There a Duty to Die?", *op.cit.*, p.326

<sup>176</sup> Margaret Battin, *ibid*, p. 326

period of chronic incapacitation requiring expensive personal care. That supportive care can be as expensive as intensive care is revealed in a recent study in which a group of frail elderly patients, receiving mainly supportive care, cost as much as a group of elderly patients who required relatively intensive care. Seventy-five percent of the total costs for care of the first group was for home and nursing-home care and not for hospital and physician services.<sup>177</sup>

Incapacitation following denial of, what Daniels terms 'life-extending' technology may not correctly be termed 'dying'. Daniels' characterization of such technologies as dialysis, transplant surgery, or by-pass surgery, as "life extending"<sup>178</sup>, does not describe them in an exhaustive way. Frequently such technology is required simply to restore some part of an individual's normal opportunity range. One can think of persons whose heart disease is not necessarily life-threatening, but which considerably reduces their opportunity to play golf, go for a walk, get up and down the stairs, etc. By invoking an age criterion the deliberators relegate many elderly persons to that no-man's land beyond the boundaries of justice which Daniels admitted to be a problem of his equal opportunity account with respect to dying and severely retarded individuals. Daniels admits that his health-care system has no obligation

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<sup>177</sup> A. Scitovsky, A. Capron, "Medical Care at the End of Life: The interaction of Economics and Ethics", Annual Review of Public Health, (7, 1986), p. 71

<sup>178</sup> Norman Daniels, Am I My Parents' Keeper, op. cit., p. 87

deriving from justice to pour resources into the palliative or personal care required by those who, because of congenital defects or terminal illness, cannot approach, or regain the normal opportunity range of society. Similarly, there would be no obligation deriving from justice to care for those elderly persons denied life-extending technology because of the age-criterion. Daniels admits that such cases, given his thesis as to what constitute healthcare needs and what constitutes justice in distributing healthcare so as to address those needs, may fall beyond the "domain of justice into other considerations of right"<sup>179</sup>, a domain where "moral virtues other than justice become prominent"<sup>180</sup>. It should be noted, too, that just healthcare to relieve pain and suffering is implied by Daniels' account only where such relief is necessary for the reinstatement of an individual's normal opportunity range. There is no medical need in this account to be free from agony merely for the sake of being free from agony. There is no socially-guaranteed, justice-inspired obligation to address such non-needs. This rendering of justice as something so icily remote from human care and compassion supports my belief that justice needs to be tethered more firmly to the stronghold of our deepest moral convictions. Justice should not be an autonomous realm, but a realm framed (and I mean constrained) by

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<sup>179</sup> Norman Daniels, "Health-Care Needs and Distributive Justice", op. cit., p.

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<sup>180</sup> *ibid*, p. 168

morality. Daniels' leaves the issue of how his account of justice is to incorporate considerations of compassion or beneficence precariously unresolved. He merely says that other moral considerations "may require humane care" where his present account of justice fails to guarantee it. The opportunity for patients with Alzheimer's disease to wander safely in humanely designed, comforting space is not an opportunity recognized by his account and their care, along with care for the terminally ill, is not required by principles of justice:

Where disability is so severe that services do nothing to compensate for losses of normal functioning, for example, in very advanced stages of Alzheimer's disease, we cannot explain the importance of these services by their effect on opportunity. This problem is not special to long-term care, for medical services face the same issue wherever there is terminal illness...in these contexts, other moral considerations, such as beneficence, may require humane care where principles of distributive justice no longer inform us about the relative importance of such treatment.<sup>181</sup>

How would it feel to be disenfranchised from the realm of justice in Daniels' world - first by being denied life-extending treatment and then by being denied care for the untreated condition? Battin suggests that prudent deliberators would not find attractive the possibility that they would be abandoned to a prolonged period of morbidity:

To ration health care by denial of treatment is not simply to abandon the patient to death, but, often, to abandon him to a prolonged period of morbidity, only later followed by death. But, of course, this is a prospect

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<sup>181</sup>

Norman Daniels, Am I My Parents' Keeper, op, cit., p. 107

which the rational self-interest maximizer, behind the veil of ignorance about whether he himself will succumb quickly in an acute crisis or be consigned without substantial medical assistance to a long-term decline, will be concerned to protect against.<sup>182</sup>

If Daniels' account of healthcare places those who cannot approach a normal opportunity range (society's range, or their own individualized reflection of society's range) beyond the pale of obligatory care, there is no guarantee that those individuals denied access to certain technology by an age criterion would receive appropriate palliative or personal care. Their abandonment could be far worse than even Battin envisions.

The prospect of this extreme abandonment may support Battin's thesis that prudent deliberators will reject policies that deny treatment on the basis of age and look, instead, at policies which curtail healthcare costs to the elderly by killing them quickly rather than allowing them to die slowly. Battin believes that prudent deliberators would choose "direct termination policies"<sup>183</sup> in order to maximize life and avoid suffering. She maintains, and I find myself in substantial agreement with her given Daniels' set-up, that "willingness to endure suffering" is not a "prudent posture" where age rationing precludes nearly all medical support <sup>184</sup>:

The rational person in the original position, then, who counts among his self-interests both the avoidance of suffering and the preservation of his

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<sup>182</sup> Margaret P. Battin, *op. cit.*, p. 328

<sup>183</sup> Margaret Battin, *op. cit.*, p. 332

<sup>184</sup> Margaret P. Battin, *ibid*, p. 332



life, will correctly see that social policies providing for the direct termination of his life at the onset of substantial morbidity in old age will more greatly enhance his prospects in satisfying these self-interests than any alternative open in a scarcity situation.<sup>185</sup>

Prudent deliberators would not choose a fixed age for instant dispatch since they are aware that "It is not old age itself which is medically expensive; it is the last month, six months, or year or two of life. Variations in costs and efficacy of treatment are not so much a function of time since birth as time to death."<sup>186</sup> The termination criterion, therefore, would be "the onset of what is likely to be a downhill course ending in death"<sup>187</sup> whenever such onset occurs in old age. (I emphasize this to show that an age criterion is still in effect - that is, one does not get terminated unless the downhill course begins after whatever age it is that the prudent deliberators have chosen). Furthermore, since it would not be rational to agree to policies in the original position with which one would have difficulty complying in the real world, the policy would have to be psychologically benign - it should not "impose lifelong anguish or fear"; therefore, such termination would be quick and painless and social attitudes and expectations would have to be engineered so that it would be considered virtuous to 'choose' to die.<sup>188</sup> (It should be remembered here that Daniel Callahan is already

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<sup>185</sup> Margaret P. Battin, *ibid*, p. 334

<sup>186</sup> Margaret P. Battin, *ibid*, p. 338

<sup>187</sup> Margaret P. Battin, *ibid*, p. 338

<sup>188</sup> *ibid*, p. 335

busy engineering such expectations). In order to avoid abuse of the termination policy and to preserve free choice, deliberators will insist that compliance with direct-termination policies be "essentially voluntary at the level of individual choice".<sup>189</sup> The "choice", of course, consists in a quick and painless death or abandonment to the psychological and physical suffering resulting from an absence of healthcare and from being socially ostracized for one's failure to do the virtuous thing! Some choice!

Battin's account of how Daniels' prudent deliberators would resolve the age-group problem is not intended by her to be a slippery slope argument constructed to undermine Daniels' thesis. Battin is supporting Daniels' thesis by leading the deliberation to its most prudent conclusion. Her qualification (warning) that such a policy may not be fully compatible with contemporary conditions because, among other things it would require a "background of just institutions to ensure its operation" is not a tactic to evade the implication of her argument. Her chilling conclusion:

Consequently, although I believe there is a cogent argument for the moral preferability of a quite startling form of age-rationing in a scarcity situation - voluntary but socially encouraged killing or self-killing of the elderly as their infirmities overcome them, in preference to the medical abandonment they would otherwise face - this is in no way a recommendation for the introduction of such practices in our present world.<sup>190</sup>

I offer Battin's assessment as a slippery slope argument. I find its conclusions repugnant. Even if the repugnance of the conclusions is somewhat mitigated by the

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<sup>189</sup> Margaret Battin, *ibid*, p. 337

<sup>190</sup> Margaret Battin, *ibid*, p. 340

fact that both Battin and Daniels are discussing situations of scarcity, consistency would require that those abandoned or terminated, in conditions of dire scarcity, be those who, as it were, can't keep up with the group. A definitive age criterion does not make sense when 'down-hill courses' which will predictably end in death are terminal tracks that cross all age groups. If we are to abandon, like some primitive and historical societies have, our weak and infirm, it is not at all clear why age is the appropriate criterion.

The implication for termination is not the outcome which Daniels intended, but it is an outcome which his formulation of an age-group problem permits. That formulation serves as the first premise in an argument that does not logically entail, but which is compatible with extermination of the worst off members of society.

Daniels does not escape slippery-slope arguments even if his account survives my challenges that social justice is not invoked in his framed problem. That Daniels' account is consistent with the inhumane regime depicted by Battin constitutes a good reason to reject it even if it were coherent in the ways that I have argued it is not. It would be unkind to say that Daniels has 'framed the elderly', because, ironically much of his work consists in an effort to ensure decent medical, institutional, home and personal care services for elderly persons. Nevertheless his framed problem, upon close inspection, is consistent with depiction of a society that does indeed frame the elderly and set them up for termination.

## 5.6 A Prudent Conclusion

Daniels' Committee would review their mandate, in terms of the incompatibility of their knowledge with their ignorance, their uncertainty with respect to the content of the general principles and the prudence of possibly testifying against themselves in a trial which might set them up for impoverished palliative and personal care in youth and middle-age, or termination in old age. Given their knowledge of life expectancy and their realization that the age-stages they were asked to consider were such that they might not exist, for them, beyond the veil and given the fact that it was impossible to calculate, without more detailed information, their chances of not occupying later age-stages, in which case prudence would suggest budgeting all their resources to care in the earlier stages, the prudent deliberators would refuse to deliberate under the conditions set by Daniels.

## 6. SOME RAWLSIAN CONSIDERATIONS FOR JUST HEALTH-CARE

Rawls did not consider the primary good of health in adducing principles for the basic social structure:

Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control.<sup>191</sup>

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John Rawls, A Theory of Justice, op. cit., p. 62

However he did suggest that social policy with respect to healthcare was to be considered from the position of equal citizenship - a position which was to be occupied by everyone once the two principles of justice were satisfied:

Now as far as possible the basic structure should be appraised from the position of equal citizenship. This position is defined by the rights and liberties required by the principle of equal liberty and the principle of fair equality of opportunity. When the two principles are satisfied, all are equal citizens, and so everyone holds this position.<sup>192</sup>

From a position of equal citizenship, a principle of common interest is invoked in order to rank institutions such as those providing for public health. This principle of common interest incorporates a concern for all and everyone in a way that can be captured only in Daniels' between-persons account of just health care.

...many questions of social policy can also be considered from this position [of equal citizen]. For these are matters which concern the interests of everyone and in regard to which distributive effects are immaterial or irrelevant. In these cases the principle of the common interest can be applied. According to this principle institutions are ranked by how effectively they guarantee the conditions necessary for all equally to further their aims, or by how efficiently they advance shared ends that will similarly benefit everyone. Thus reasonable regulations to maintain public order and security, or efficient measures for public health and safety, promote the common interest in this sense.<sup>193</sup>

Daniels' intrapersonal account of justice fails to reflect the importance of Rawls' natural duties and obligation. It would be inconsistent to introduce rationing strategies

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<sup>192</sup>        *ibid*, p. 97

<sup>193</sup>        *ibid*

that are in direct conflict with the duty of mutual aid. This duty was generated in the original position because it was in the interests of everyone:

But this is not the only argument for the duty of mutual aid, or even the most important one. A sufficient ground for adopting this duty is its pervasive effect on the quality of everyday life. The public knowledge that we are living in a society in which we can depend on others to come to our assistance in difficult circumstances is itself of great value...The primary value of the principle is not measured by the help we actually receive but rather by the sense of confidence and trust in other men's good intentions and the knowledge that they are there if we need them. Indeed, it is only necessary to imagine what a society would be like if it were publicly known that this duty was rejected.<sup>194</sup>

It is doubtful in the extreme that Rawlsian contractors would permit a health-care rationing criterion which would undermine between-person confidence and trust.

Erosion of confidence and trust will be generated by any criterion for rationing health-care which arbitrarily defines a certain group in order to deny them life-extending aid.

To invite erosion of confidence and trust is to undermine the stability of society and threaten those principles of social justice already in place.

The natural duty of mutual respect is absent from Daniels' intrapersonal account of justice and is a duty which incorporates my criticism that an age criterion is not an appropriate means to achieve savings in the health-care system. To reply to someone who asks why they are being denied health-care benefits, "because you're old", is not to give a good reason for the action.

This is the duty to show a person the respect which is due him as a moral being, that is, as a being with a sense of justice and a conception

of the good...Mutual respect is shown in several ways: in our willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected.<sup>195</sup>

Persons denied access to life-saving health-care are not being merely materially affected, they are being allowed to die and our reasons for our actions should be as sound and compelling as we can make them. Since age is irrelevant to the status of persons as moral beings, it is doubtful that the duty of mutual respect would be consistent with formulation of an 'age-group problem'. To conflate individual moral beings into such bureaucratically inspired groups and to divide society along such artificial and arbitrary lines is to fail to show mutual respect by failing to use, as a criterion for inflation, something which is relevant to the determination of a moral being and something which is relevant to the issue of justice at hand. In adducing the two general principles of justice for the basic organization of society Rawlsian deliberators took into account certain primary goods and the only conflation of individuals that was made was one which was relevant to the distribution of those primary goods and relevant to the appraisal of the system. Thus individual moral persons were conceived as conflated into two groups, the worst off and the best off with respect to an index of primary goods.

Finally, Rawlsian deliberators placed emphasis upon the primary good of self esteem and considered the importance of mutual respect for protection of self-esteem:

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ibid, p. 337

Now the reason why this duty would be acknowledged is that although the parties in the original position take no interest in each other's interests, they know that in society they need to be assured by the esteem of their associates. Their self-respect and their confidence in the value of their own system of ends cannot withstand the indifference much less the contempt of others.<sup>196</sup>

Both an age criterion in health-care and the formulation of justice in terms of an 'age-group problem' threaten the self esteem of elderly citizens. It would not be in the self-interest of prudent Rawlsian deliberators to generate such a criterion or to formulate questions of justice in terms that might threaten their self-esteem when the veil is lifted. To be assigned to a group and judged in issues of fairness according to a natural and undeserved criterion such as one's age is to be judged in a way that undermines an individual's "sense of his own value", support for which includes "finding our person and deeds appreciated and confirmed by others"<sup>197</sup>. Rawls stipulated that a background condition to be maintained by principles of justice is that condition which is met "...whenever in public life citizens respect one another's ends and adjudicate their political claims in ways that also support their self-esteem".<sup>198</sup>

Perfectionism as a basis for self-respect throughout society was rejected by Rawls: "...as citizens we are to reject the standard of perfection as a political principle, and for the purposes of justice avoid any assessment of the relative value of one another's

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<sup>196</sup>        *ibid*, p. 338

<sup>197</sup>        *ibid*, p.440

<sup>198</sup>        *ibid*, p. 442



way of life."<sup>199</sup> When claims are adjudicated by reference to age, they are not adjudicated in ways that support self-esteem. We are not responsible for our aging, or for our age. We do not aim at aging as a rational plan of life. Our age does not define us as a rational or a moral person.

Daniels has borrowed from Rawls' account of justice in order to generate an account of justice in health-care which is, I have argued, in conflict with some of Rawls' fundamental tenets. Time and space prevent me from developing the implications of Rawls' work here, but I suggest that further philosophic endeavours might develop Rawls' work so as to generate an account of just health-care that protects the primary good of self esteem and does not undermine the two principles of social justice, equality of citizenship, or the natural duties.

## CONCLUSION

Ageism is a complex concept. To define it in terms of discrimination against the elderly is to define it in an ageist fashion. In addition, it is to define it in a way which invites moral parsimony, blaming the elderly and patronizing them. These points were elicited in this thesis by an examination of ageism in comparison with its parent concepts, racism and sexism. In reformulating the concept of ageism, ageism was analyzed in terms which took into account the fundamental distinctions between ageism and racism/sexism. Furthermore, ageism was discovered to be distinct from racism and sexism in that there are indirect forms of ageism which do not discriminate by age, per se, but according to functional, aesthetic and symbolic criteria which incidentally and negatively affect people in certain age groups. These latter forms of ageism show that this concept is more complex than are the concepts of racism and sexism. It was argued that ageism, at both the descriptive and proscriptive levels, is and ought to be differentiated from its parent concepts. Its conceptual identity is unique and its proscriptive content requires reformulation in a way that does not leave its proscriptive force unduly parasitic upon racism and sexism. This thesis reformulated the proscriptive force of ageism so as to illuminate the non sequitur in arguments that move from a disanalogy between ageism and racism/sexism to a conclusion that differential treatment by age is

not morally problematic. Specifically, from the fact that consistently, differential treatment by age does not involve a form of unequal treatment between people akin to that involved in differential treatment by race and gender, one need not conclude that consistently, differential treatment by age is to be morally condoned because it cannot be condemned in quite the same way that racist and gender inequalities can. If the concepts are distinct, disanalogies lead to no particular conclusion.

The remainder of this thesis constituted an attempt to specify and defend the proscriptive force of ageism. To that end appeals were made to the importance of treatment as an equal person, treatment as an equal citizen, treatment that takes suffering into account, and treatment that chooses facts about persons which are relevant to the aims of policies and the goals of moral agents. These issues were discussed in identifying the various forms of ageism and were developed further in the course of discussing comparative and noncomparative injustice in ageism and in arguing against burdensome social policies that appeal to an age criterion as a means to achieve their aims. Finally a lengthy argument was delivered against an attempt to reduce the age-group problem to intrapersonal prudence and to resolve the former issue of between-person justice by appealing to what might be just from a life-span perspective. It was demonstrated that important matters of justice are lost in the reduction and that the reductive account of justice fails to be coherent in

many ways. Since the reductive account of justice derived from, and appealed to, Rawlsian considerations, the account was criticized, in part, from a Rawlsian perspective. The account was shown to be deficient in this respect and certain aspects of Rawls' account were emphasized as fertile considerations for future attempts to extend Rawls' account to principles of just health-care.

A large portion of this thesis was devoted to undermining attempts to argue for the justice of an age criterion in access to life-extending medicine. This issue is believed by the writer to be of paramount importance because arguments to withhold certain kinds of healthcare benefits from elderly persons are becoming more and more common as ethicists try to deal with what has been referred to as the 'bottomless pit' of healthcare needs. Conditions of extreme scarcity require drastic rationing measures, but an age criterion, it has been argued, is neither a fair, nor a coherent means to save healthcare dollars. Before any members of society are placed on metaphorical icebergs conclusive evidence is required that there is such extreme scarcity and that disenfranchising fellow human beings from the realm of equal concern and care is the best that can be done to resolve the problem. Should this be demonstrated, exhaustive argument would be required to determine what criteria for disenfranchisement ought to be used. To choose a simple, bureaucratically-inspired and efficiency-oriented criterion such as age is to look for the most expedient way, rather than the most just or moral way, to solve a

problem which has been, too quickly, pronounced to be a problem. As yet, we have not determined to what extent a sustained attempt to pare useless forms of treatment would negate the need for rationing. As yet, we haven't determined to what extent a special healthcare tax on those who voluntarily engage in health-threatening habits and life-styles would affect the need to ration healthcare. We're not on a life-boat. There is no urgent need to decide who goes overboard. What's the hurry? We age, but justice does not.

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