

# 14 Health care access, population ageing, and intergenerational justice

CLARK WOLF

## Population ageing, intergenerational conflict, and the role of normative theory

As time passes, we all age. But the ageing of individuals may or may not be accompanied by the ageing of the society in which they participate. Demographic shifts in the patterns of birth and death can lead to a greater or lesser proportion of older to younger members, and such changes imply corresponding changes in the pattern of individual human needs. When the pattern of needs changes, it may often be necessary to reform the social institutions that are intended to respond to them. Recent demographic changes in the United States have generated political pressure for just such reforms as the proportion of elderly to young Americans has swiftly grown: the number of Americans sixty-five years of age and older has more than doubled since 1950, while the number over age eighty-five has more than quadrupled. In the same period, fertility rates fell until 1976, and are still relatively low. The overall effect is that there are many more elderly retirees for every younger worker. Since US institutions provide for those who are currently elderly by taxing pre-retired workers, this has led to severe strains on the social institutions designed to serve the needs of the elderly, and has created an ever-increasing burden for the young. These problems have been most keenly felt within institutions that provide health care and income support for the elderly.

As Norman Daniels notes;

employed workers - young and middle aged adults - pay the overwhelming share of all health-care costs. On the average, their annual health-care insurance premiums - partly in the form of employer benefits, partly in the form of their own payments, partly in the form of payroll taxes - far exceeds their actual health-care costs. There is a transfer of health-care resources to children, and even more dramatically to the old.<sup>1</sup>

This distribution of burdens for the young and benefits for the elderly has led, in the United States, to charges of intergenerational inequity. In the popular press, there have been charges that current institutions, operating at the behest of 'Greedy Geezers'<sup>2</sup> are 'Consuming our Children.'<sup>3</sup> The American Association of Retired Persons (AARP) has come to be regarded by many as a political menace, and is widely perceived to be supporting programmes that unfairly burden the relatively poor, younger workers in order to provide benefits for wealthy older retirees. This view of the AARP is not altogether fair, but it is increasingly widespread. There is a general sense that the young and old are in competition for a limited set of resources, and lobbyists have been active on behalf of both groups.<sup>4</sup>

It has been widely recognized by those who have written on this subject that the notion of 'intergenerational equity' is subject to facile misunderstandings. One kind of inequality exists in a society when one age-group is better off than another. For example, if children tend to be poorer than middle aged workers, who in turn tend to be worse off than the elderly, this constitutes a kind of inequality. But we might judge that such inequalities are unproblematic from the standpoint of fairness or justice if we were to find that life prospects for members of these three groups were more or less equal. A more disturbing kind of inequality exists when children's lifetime prospects are systematically worse than those of their parents. If our concern is for intergenerational fairness, we need to make comparisons across birth-cohorts rather than simply comparing the wealth of the elderly with the relative poverty of the young.

Reflection on these different types of intergenerational comparisons opens the way for a series of questions: What conception of intergenerational equity, if any, should we use to evaluate the justice or fairness of our institutions? Under what circumstances is it unjust to require the young to bear the costs of care for members of the previous generation? Under what circumstances, if any, could it be just to deny or to fail to provide care to the needy elderly or to needy children? What social institutions will best protect the interests of old and young alike? And finally, how can such institutions be put into place in a democratic society? There is no broad agreement in the US on answers to these questions, or even on their meaning. In popular discussions of justice between generations, participants often seem to be talking past one another. In such a context, there are two distinct roles for normative philosophical discussions of the problem of intergenerational justice. First, such discussion may serve to clarify the problem, and to help focus attention in the right place, avoiding the red-herrings set down by interest groups and pundits. Second, a well worked

out philosophical account of justice between young and old should provide guidance for policy makers in their efforts to improve and reform social institutions so that they may more adequately respond to demographic changes and changing social needs.

Some philosophers have sought to accomplish this by providing an 'ideal theory', an account of the normative principles that would govern the functioning of institutions under circumstances of perfect justice. Such a theory, it is hoped, may provide us with insight into the ways in which our actual and imperfectly just institutions might be improved and reformed. With a clear understanding of our final goals for our institutions, we may be able better to understand what we now need to do to make our institutions more just. But we may have reservations about such ideal theories of justice: the old saying that 'The best is the enemy of the good' teaches us that we may sometimes do worse if we strive for perfect justice than we would have done if we had instead worked toward more modest, but still achievable goals. A full normative theory should not merely provide a description of an ideal; it should also provide us with guidance as we make policy decisions under conditions of restricted information, and under realistic political and financial constraints. Where perfect justice is not a realistic, achievable goal, we still need criteria for evaluating those outcomes that are achievable, so that we can effectively work toward the improvement of our institutions and social policies.

In this paper, I will examine the practical and philosophical problem of distributive justice between young and older members of society. I begin with a discussion of what is clearly the best current theory of intergenerational distributive justice: Norman Daniels' Prudential Lifespan Account (PLA), articulated in his recent book *Am I My Parent's Keeper?* (Daniels (1988) henceforth PK) After a critical examination of Daniels' account, I will evaluate it by making pairwise comparisons between the PLA and two alternatives: (i) a modified utilitarian alternative that minimizes expected lifetime costs due to illness or deprivation for each representative member of society, and (ii) a 'sufficiency' alternative that includes a universal right to a basic minimum of health care but leaves needs for resources beyond this basic minimum to the distributive mechanism of the market. While each of these theories has, I will argue, some advantages over Daniels' prudential lifespan account, I will argue that the latter view represents an alternate ideal that is more realistically achievable, and which would still be a dramatic improvement on current institutions in the US and elsewhere.

## Daniels' Prudential Lifespan Account

The account of age-justice developed by Daniels in his 1988 work is in many ways a continuation of the theory developed in his earlier book, *Just Health Care* (1985), but represents a significant development and extension of this earlier view. These two works have set the agenda for discussions of justice in the distribution of health care in much the way that Rawls' *A Theory of Justice* has continued to set the agenda for political philosophy: whether one agrees with Daniels or not, his work is the place to start. While my discussion of Daniels' view will be mostly critical, and while I will defend an alternative to that view, it is important to recognize the degree to which my discussion is indebted to his work. Daniels has clearly brought discussion of the problem of justice between neighbouring generations to a new level. In what follows, I will first present what I hope is a sympathetic reading of the main elements of Daniels' view.

Daniels begins by reframing the problem of justice between young and old. The conflict between these groups, he argues, is in some ways illusory. Since we all age, the current young will eventually be old, and will stand to benefit later in life from institutions that may seem to burden them now. We should therefore replace questions about the apparent conflict between young and old with questions about the way in which our institutions respond to the changing needs of different birth-cohorts as they pass through the stages of their lives from childhood to old age. If we are concerned about fair treatment of persons, we should be less concerned about differences in treatment of young and old, and more concerned about differences in treatment and lifetime expectations between cohorts. Institutions that impose burdens on the current young may not treat persons unequally, provided that those who currently bear the costs will have the opportunity to reap compensatory benefits when they are older. Daniels is right to point out that some aspects of intergenerational conflict disappear when we compare cohorts instead of age groups.

But this reframing of the problem is not sufficient to generate a full theory of justice between generations. In addition, it is necessary to provide an account of the way in which institutions should respond to people's changing needs over time. In this interest, Daniels recommends that we should consider what would be chosen from behind a Rawlsian 'veil of ignorance' by prudent agents searching for principles to govern the structure of health care institutions under which they will live complete lives, from birth to death. As in Rawls' (1971) theory, the veil of ignorance extends first-person prudential concern so that

rational individuals will take into account the interests of each member of society. It accomplishes this by imposing a constraint on those who are charged with the task of choosing principles for the distribution of health care resources: while these prudent choosers know general facts about society, about patterns of disease and demographic changes in the society's age-profile, they do not know their own identities, nor do they know to which sub-groups of society they belong. They must choose principles that will determine the structure of distributive institutions without knowing precisely how these institutions will affect their special interests. So they must consider the way in which their choice will influence the life of each person in society. On Daniels' view, the specific question these choosers are to address might be stated as follows: 'What normative principles should regulate the basic institutions that govern the distribution of health care resources among younger and older members of society, and how should these institutions operate to distribute each person's fair share of these opportunities or resources over the course of a complete life?' This choice is framed, Daniels insists, within the assumption that other problems of distributive justice have already been solved, and that the overall budget that prudent deliberators must allocate over each person's lifespan has been defined by the solution to this prior problem:

In our restricted or framed problem, the problem of justice between age groups, we are to suppose that hypothetical deliberators already know what inequalities in lifetime expectations are acceptable. That is, they already know what counts as a fair share, and they must decide a further question: How should that lifetime expectation of enjoying a certain level of primary social goods be distributed over each stage of life so that lifetime well-being is maximized? (PK 61-2)

By considering what prudent agents would choose if they did not know their race or gender or religious affiliation, Rawls (1971) ensures that the principles of justice chosen from behind the veil of ignorance will not be tailored unfairly to serve the interests of any particular subgroup in society at cost to other groups. Daniels extends this Rawlsian argument to cover distribution over time within a life, but this requires the imposition of a different kind of constraint: those who choose principles from behind the veil of ignorance must not know their present age. Because of this restriction, they will be unable to tailor institutions to serve the interests of their particular age group. This makes the problem of justice between age-groups analogous to the problem of budgeting resources to be used over the course of a complete life. Daniels writes 'The age-group problem is equivalent to a problem of budgeting within a life only if

we assume institutions operate over the whole lifespan. The prudent consumers designing it must plan accordingly, that is, without reference to - or knowledge of - their actual age. Only by denying individuals information about how old they are can we retain the frame within which the appeal to prudence may be justified.' (PK 51)

The conditions on the choice situation Daniels describes can be summarized in four broad requirements:

1. The choice is one in which prudent deliberators are to settle on principles that will govern the design of institutions that distribute resources over a lifespan.
2. Their choice is made from behind a 'veil of ignorance', which insures that their choice will not be inappropriately partial, and that the principles they choose will not unfairly be tailored to serve their special interests. In addition, they do not know what conception of the good they will adopt at different stages in their lives, but must instead gauge their prospective well-being by reference to a Rawlsian list of primary goods.
3. They are assumed to know that a more general theory of justice already adequately addresses the more traditional problem of distributive justice between persons. The problem that remains is only the problem of distribution over time within a life, across various stages of life.
4. Finally, Daniels' prudent choosers must assume that they will live through each stage of life under institutions governed by the principles they choose.<sup>5</sup>

How would prudent agents reason in such circumstances? Has Daniels given a sufficiently rich description of the circumstances in which this choice is to be made that we can predict how they would reason, and what they would choose? Daniels claims that such agents might prudently reason as follows:

In thinking about my well-being over my lifetime, prudence demands that I abstract from the perspective of my current plan of life, including my knowledge of my stage of life. One way to do this is to imagine that I know I shall have a conception of what is good in life, but that I do not know exactly which one it is. I may think of myself as free to form and revise my plan of life over time, and my lifetime well-being will depend on my having available to me at least a fair share of the all-purpose means for pursuing my ends, whatever they may turn out to be. (PK, 61)

As we age, our conception of what is valuable in life is likely also to change. It will be important to insure that these changes in our evaluative conception can be made under circumstances that allow us to be epistemically justified in the evaluative conception (or 'conception of the good')<sup>6</sup> on which we settle. As prudent agents decide how each person's fair share of health care resources should be distributed over the course of a complete life, they will be centrally concerned to protect these abilities. In consequence, argues Daniels, they will choose principles of fair equality of opportunity that will provide people with basic primary goods, and with opportunities to form, and to rationally revise and pursue, a conception of the good. In applying the principle of fair equality of opportunity over the lifespan, argues Daniels, prudent agents will find it important to protect their age-relative normal opportunity range.

The normal opportunity range for a given society is 'the array of life plans reasonable persons in it are likely to construct for themselves.' (PK 69) Since the normal opportunities available to a person will be different in different societies, Daniels relativizes this notion to particular societies. Since the normal opportunities available to a person will be different at different stages of life, the notion of an age-relative normal opportunity range identifies the kinds of opportunities available to individuals at different stages over the course of a complete life. Daniels claims that prudent choosers will accept the following principle:

Principle of Age-Relative Fair Equality of Opportunity: Social resources should be allocated so as to insure that everyone can attain the normal age-relative opportunity range for his or her society. (PK 73-82)

He regards this principle as an application of a more general principle of fair equality of opportunity which, as he has argued, will be a crucial component of any acceptable theory of justice. In addition to the Age Relative Equality of Opportunity Principle, Daniels claims that agents will choose the following 'Income Preservation Principle':

Income Preservation Principle: Each individual should have available at each stage of life, an adequate income to pursue whatever plan of life he may have at that stage of life. (PK 121)

As the 'Principle of Age-Relative Fair Equality of Opportunity' governs the distribution of health care resources, the 'Income Preservation Principle' should govern institutions involved in income support over the course of a complete

life (PK 124-5). Daniels argues that prudent agents will choose this principle, since, as he claims, prudence requires individuals to have equal concern for their well-being at all stages of their lives. Combined with the view that we should focus on inequalities in lifetime prospects, these two principles constitute the central features of the Prudential Lifespan Account of justice between age groups.

There are two general questions we may ask in considering whether Daniels has provided an adequate theory of distributive justice between young and old, and over the different stages of a complete life. First, we may ask whether Daniels has described the choice from behind the veil of ignorance in a way that is normatively adequate. According to Daniels, the choice situation connects prudence with justice. He writes 'Whatever is prudent from this perspective constitutes what is just' (PK 92). But this can be true only if Daniels' account of prudence is defensible, and only if the restrictions on individual choice that he describes are appropriately connected with a defensible conception of justice. Second, we may ask whether prudent agents faced with the choice Daniels has described would in fact choose the principles Daniels recommends. In what follows, I will consider each of these questions. First, in section III, I will consider Daniels' account of prudence, and the argument in support of the Income Preservation Principle, which depends on an assumption that individuals should be equally concerned with well-being at every stage of their lives. I will argue that this 'requirement of equal concern' is not a requirement of prudence, and will suggest a more modest alternative. Then in section IV I will consider Daniels' argument for the Principle of Age-Relative Equal Opportunity. Again, I will argue that problems in his account of the requirements of prudence undermine this argument. It follows that Daniels' argument from prudence underdetermines the principles that constitute the PLA. This opens the way for alternative prudential accounts of intergenerational justice.

### **Constraints on self-interest, and problems with prudence**

From behind Daniels' veil of ignorance, agents do not know their age, and are to assume that they will live a complete life under the institutions they choose. One might think that it follows from such considerations that the very young are in a better position than the old when it comes to such budgeting decisions: their current interests give them reason to weigh the prospective benefits of eldercare against the costs they will bear, while the interests of the elderly are served when



costs, which are born by younger workers, are ignored. But Daniels insists that the perspective from which the choice should be made is not the perspective of the young:

If we set fully informed consumers the task of budgeting their fair share of health care over their lifetime, we would have to restrict them to choices made at an early point in life. Otherwise, jumping from plan to plan would lead them to exceeding their fair share. But then we seem to bias plans in favour of what the young take to be prudent and ignore the prudence of the old (PK 63-4).

Young people already have a conception of what is valuable in life, and this conception may be quite different from the evaluative conception they will later have when they are older. One reason for this is that people's values change over time, but another reason is that the old and the young have different interests, since institutional change will affect their lives in different ways. Since older people are, for the most part, beneficiaries of health care institutions which they are presumed to have supported when they were young, their current interests would be served by changes to institutions that provide increased benefits to them in their remaining years. While the young stand to benefit from such institutions when they are older, they will also bear the increased costs that such changes would imply, and therefore have an incentive to balance prospective benefits against current costs. By imposing a veil of ignorance to constrain the choice of principles, Daniels reduces the influence of such differences in perspective and interest.

But if there is a difference between (i) the perspective of the young, who have a current conception of the good, but who also have an interest in protecting their interests in youth as well as in old age, and (ii) the dissociated perspective Daniels imagines his prudent agents adopting behind the veil of ignorance, it is not clear what difference this will make for the choice of principles. The young might make impetuous and imprudent choices from behind the veil, but this cannot be the difference, for Daniels stipulates that the choice will be prudently made. If this is a distinction without a difference, then we might do better to imagine the parties to the choice behind the veil to be young persons who anticipate that they will bear the costs as well as incurring the benefits.

Daniels considers his argument for the veil of ignorance to be substantively different from that of Rawls. Rather than stressing the impartiality of the choice to be made, he instead offers prudential reasons for accepting this constraint. He writes, "To demonstrate an equal concern for all parts of their lives, the prudent

deliberators should not base their choices on the details of the plan of life they happen to hold at the time of choice' (PK 120). There are two separate components of this 'non-Rawlsian' argument for the veil of ignorance. The first is Daniels' Requirement of Equal Concern, which stipulates that 'A rational person should be equally concerned about all the parts of his future' (PK 159). The second component is the claim that rationality requires that we maintain circumstances in which it is possible for us to form and to rationally revise and pursue our changing conception of the good.<sup>7</sup>

We may question whether either of these components should be included as a requirement of rational prudence. In arguing for the Requirement of Equal Concern, Daniels considers a series of common arguments that have been raised against the practice of discounting the future. Jeremy Bentham (1984/1789) claimed that it was appropriate for rational persons to care more about their proximate futures than about their more distant futures, but Bentham's claim has been rejected by subsequent philosophers and by many economists as well. One of the most persuasive arguments Daniels' offers is an argument that discounting implies a discontinuous and disjointed conception of individual well-being over time, since the value of well-being at any stage in life will be different, depending on the perspective from which it is evaluated:

When we look at the graph of a continuous function through a magnifying glass, the segment in focus seems discontinuous with the rest of the line. It is on a new scale. We can move the glass along the line, and the effect is not a new, continuous function, but relocation of the discontinuity. A Discounter looks at his well-being through such a magnifying glass. As he ages, the utility he cares about, discounted utility, will lead to different assessments of his well-being for the same point in his life. At E, his discounted utility for point L will be a different value from what his discounted utility for L will be at L (PK 167).

Daniels is not the only philosopher to argue that discounting can be intertemporally inconsistent in this way. John Broome (1992) and Peter Hammond (1988) have offered more formalized versions of a similar objection. But if Daniels' aim is to support the Requirement of Equal Concern, it is not sufficient to argue against discounting of this sort. There are ways in which an individual might distribute concern for different portions of her life unequally without being intertemporally inconsistent in the way that Daniels describes: one might persistently place different values on well being at different points in one's life. Consider, for example, a college student deciding whether to spend the years of her youth travelling and seeing the world instead of finishing an

advanced degree. She might decide that travelling while she is young is likely to have costs, and may result in her being worse off in old age. Still, she might rationally decide that travelling-while-young is something she simply wants to do, and wants to-have-done when she is old. She might decide that the overall shape of her life will be better if she chooses to travel in spite of the fact that this may diminish opportunities in later life, so that she will be worse off than she might otherwise have been. Such a plan might be part of a well thought-out understanding of the shape she wants her life to take overall. Absence of regret is sometimes considered a guide to prudence: but even if, in later years, she were worse off as a result of this early decision, since some plans of life might be unavailable to her as a result, she might not regard it as having been imprudent, and she might not regret having made it. It is difficult to see why we should convict such a person of irrationality. If not, we must abandon Daniels' Requirement of Equal Concern.

There is a further problem in Daniels' argument for the Requirement of Equal Concern. Daniels fails to notice that this requirement applies equally, whether one discounts future misery in pursuit of present delights, or endures (discounts) present misery in the hope that one may be compensated by future well-being. Consider the choice faced by a student who decides to endure years of gruelling school work, in the hope that he will be compensated later in life, after graduation. Such a choice reflects a willingness to make trade-offs between present and future well-being, and may represent a self-conscious decision to distribute well-being unequally, such that he will be worse off while younger. But such choices need not involve intertemporal inconsistency, and are not typically considered to be irrational or imprudent - indeed, such foresight is often taken as a paradigm case of prudence. Daniels' argument gives us no reason to regard either of the choices I have described as imprudent. He has therefore failed to provide adequate support for the Requirement of Equal Concern.

The Requirement of Equal Concern is the first component of Daniels' 'non-Rawlsian' argument for the veil of ignorance. Without this requirement, it is difficult to see how Daniels could support the Income Preservation Principle, which is one of the main components of his theory. If prudence does not require equal concern for all portions of one's life, then it might not be irrational for prudent agents to choose health care institutions that distribute well-being or income unequally over the lifespan, although prudence might still require agents to make sure that they will not lack a basic minimum of income

and health care at any stage in life. As I will argue, this suggests an account of intergenerational justice quite different from the one Daniels articulates.

### **Revisability and rational choice**

The second component of Daniels' argument for the veil of ignorance is developed from his claim that prudent agents will be concerned to protect their ability to revise their conception of what is valuable in life, and their ability to pursue the evaluative conception they come to accept. Clearly, people's understanding of what is valuable in life changes over time. According to Daniels, recognition that one's values and one's conception of the good will change in this way will give prudent agents reason to insure that they will not, at any of the various stages of their lives, lack the resources and opportunities necessary for the adoption, and the rational revision and pursuit, of their evolving conception of the good. Along with the Requirement of Equal Concern, this argument from revisability and rational choice provides crucial support for Daniels' claim that prudent agents will choose a Principle of Age-Relative Equality of Opportunity - the second key element of his prudential lifespan account.

As Daniels acknowledges, this argument has recent roots in a well known paper by Allen Buchanan (1975), but Buchanan himself traces its deeper historical roots back to Kant. The argument points out that rational persons must take into account and plan for the fact that their understanding of what is valuable in life will change over time. Buchanan argues that if one accepts that valuation is, at least to some extent, a rational enterprise, one will also recognize that one's current values are conditional on many current beliefs. Recognizing that we are not infallible, we should recognize that our values may change as we gain information and revise our current beliefs. As Buchanan writes, 'One will realize that one's life plan or conception of the good may eventually require serious modification, perhaps even abandonment, in the face of a successor conception. No matter how unlikely one thinks it to be that one's (current) conception of the good will turn out to be mistaken, one must at least remain open to the possibility that one's present conception is mistaken,'<sup>8</sup> and that new information or reflection may cause one to call current commitments into question. Buchanan recommends that we adopt the following Revisability Principle:

R: One ought, *ceteris paribus*, to maintain an attitude of critical revisability toward one's own conception of the good (or life plan) and of open-mindedness toward competing conceptions.

Buchanan argues that the revisability principle is a principle of practical rationality for any agent. Daniels apparently accepts Buchanan's argument, holding that R, or something like it, must be a principle of prudence, for he ascribes to his prudent agents a line of reasoning quite similar to the reasoning Buchanan uses in his support of principle R. In particular, Daniels uses this argument to provide the essential support for his own principle of Age-Relative Equality of Opportunity.

Is R a principle of prudence? It may well be rational for most of us to insure that we will possess the necessary resources and opportunities to revise and rationally pursue a conception of the good that will change over time. But while most of us have good reasons to accept Buchanan's revisability principle, it is not obvious that this principle is a basic requirement either of rationality or prudence. If prudence required that we do what we can to maintain circumstances in which rational revisability is possible, then it would be impossible for a prudent agent knowingly to choose to limit future opportunities for such revision and rational pursuit. But under some circumstances, it might well be prudent to limit one's ability to revise one's conception of the good, or to impede one's future ability to pursue the conception of the good one expects eventually to adopt. Consider, for example, the case of a person who reflectively endorses her present conception of the good, but recognizes in herself the capacity for backsliding on her present commitments. It might be prudent for such a person to endeavour to limit later opportunities to relinquish the values she now holds dear, or even to take steps to limit her later opportunities to pursue different values which she now reflectively regards as inferior. If it can be prudent to restrict one's ability to change one's values, or to restrict one's future ability to pursue the evaluative conception one will in the future come to accept, then the revisability principle cannot be a requirement of prudence.

From my claim that the revisability principle is not a requirement of prudence, it does not follow that most prudent agents will not or should not accept this principle, nor does it follow that prudent agents would not choose Daniels' principle of Age-Relative Equality of Opportunity from behind an appropriately restricted veil of ignorance. It does follow that their choice of this principle is underdetermined by Daniels' account of prudent choice from behind a veil of ignorance, opening the possibility that they might choose an alternative principle. Since I will be considering alternatives to Daniels' account without

rejecting the central features of his evaluative framework, this is a crucial component of my argument.

### **Separating general justice from age-justice: two objections**

As a methodological assumption, Daniels argues that the question of age-justice should be addressed separately from other considerations in the general theory of justice. We are to consider the problem of distribution through the lifespan on the assumption that other more general questions of distributive justice have already been answered. These prior questions settle the size of the 'fair share' that is available for distribution over each person's lifespan, thus framing the age-group problem in a way that makes it more manageable. He claims that the attempt to solve the age-group problem without framing it within a settled theory of distributive justice would be like 'trying to budget health care over the lifespan without knowing how much we have to budget' (PK 48).

While this methodological assumption simplifies the problem he hopes to address, it also implies a range of more questionable assumptions which Daniels leaves more or less unexamined. Two of these assumptions deserve serious reconsideration: First, Daniels' methodology implies a presumption that what a general theory of justice entitles people to, as individuals, is a finite budget of health care resources and primary goods, to be distributed over the lifespan. This is different from the assumption that total social health care expenditures will be finite, and that the overall budget should be used in a way that will minimize each person's expectation of suffering and harm due to illness or disability,<sup>9</sup> for the former implies that each person must get a fair share, while the latter might allow distribution according to need. On need-based distribution principles, those who are not in need might get no share at all of public resources. In fact, Daniels' methodological assumption seems to cut off the possibility that this plausible alternative could even be considered. I discuss this first objection in more detail in sections VI and VII below. Second, framing the problem of age-justice within what we suppose to be a finished general theory of justice implies unidirectional influence of the account of age-justice by the general theory of justice. It rules out the possibility that our understanding of age-justice might lead us to revise our understanding of the general theory. Daniels provides no argument for his implicit claim that we should not make revisions of this sort. This second objection will be discussed in sections VIII and IX.

*First Objection: Should we understand age-justice in terms of health care resource distribution within individual lives, or health care access over a population?*

The first assumption, that what justice entitles people to is a finite budget of resources, to be distributed to individuals over the lifespan, is a convenient assumption, since it encourages us to believe that the problem of justice in distribution over the lifespan can be addressed in much the same way as other problems of distributive justice where there is a finite pie to be divided. It might seem that this assumption is supported by the reflection that the total health care budget really is finite, and needs to be distributed in some way or other over the population. But different people have quite different needs, since different lives are different. When people's needs are different, it may be quite appropriate to distribute resources unequally. Daniels's assumption incorporates questionable substantive moral commitments that deserve further examination.

To uncover these implicit substantive moral commitments, we might compare his account of choice from behind the veil of ignorance to a contractually based utilitarian alternative.<sup>10</sup> This alternative accepts Daniels' contractarian assumption that principles of justice should be chosen from behind a veil of ignorance, and also accepts his account of just what information this veil screens out. In this sense, this alternate view is a form of contractualism, and not a straightforward utilitarian view. But instead of considering how each person's share of a finite stock of resources should be distributed over a lifespan, this utilitarian alternative sets the prudent agents the task of choosing how to allocate the sum total of social resources (as opposed to individual resources) devoted to health care for persons at various stages in life. From behind Daniels' veil of ignorance, it might seem natural to suppose that prudent agents who assume that they will live complete lives under the institutions they choose would at least seriously consider the following proposal: Social institutions should be arranged and social resources should be used in such a way that for each individual, his or her expectation of suffering due to ill health or deprivation is minimized.

*First Pairwise Comparison: Prudential Lifespan Account v. Contractual Negative Utilitarianism (CNU)*

As an alternative to Daniels PLA, I have in mind the following procedure, which might be followed by prudent agents faced with the choice Daniels envisages: From behind the veil of ignorance, agents might first decide what portion of public expenditures should go toward health care needs. This initial choice will reflect the relative importance of these needs in comparison to alternate legitimate uses for public funds. Once this choice has been made, they still need to decide how to allocate those resources that have been reserved for health care. At this stage of the process, why would they choose Daniels' PLA rather than a negative utilitarian principle that recommends that these resources should be used in such a way that they minimize, for each individual, the expectation that she will suffer from ill health or deprivation? Since this proposal incorporates Daniels contractarian assumptions (choice from behind the veil of ignorance) but recommends a negative utilitarian principle in place of the prudential lifespan principles, we may call it Contractual Negative Utilitarianism (CNU).

While CNU reflects utilitarian assumptions, it is quite different from other typical utilitarian proposals. A standard utilitarian recommendation for the distribution of health care resources recommends that resources should be distributed in such a way that we maximize quality adjusted life-years (QALYs) saved. This proposal is often rejected as unfair, since it would recommend shifting resources away from those who need them most, whenever those who need them less would more efficiently transform them into QALYs. Rather than maximizing well being or QALYs, the proposal under consideration here is that we should minimize suffering and deprivation (Dis-QALYs?). Negative utilitarianism focusses on those who are badly off, and more or less ignores those who are adequately well off (neither suffering nor deprived). Consequently, CNU is not vulnerable to many of the objections that people raise against classical utilitarianism. For example, unlike classical utilitarianism, negative utilitarianism forbids purchasing bliss for those who are well off at the price of even slightly deeper misery or unmet needs for the few. For the negative utilitarian, it is impermissible to promote happiness or bliss whenever doing so would also increase misery. How does CNU fare in pairwise comparison with Daniels' PLA? I will suggest that CNU has two key advantages, and that prudent agents would do well to choose it instead of Daniels' alternative. First, CNU is more efficient and effective in response to health care needs. Second, CNU incorporates a more adequate conception of fairness than the PLA.



Daniels argues that each person's fair share of health care resources should be distributed over the lifespan in such a way as to insure that each person will attain the normal age-relative opportunity range for his or her society (PK 73-82). Since this requires satisfaction of basic health-care needs, the PLA is responsive to people's needs. But the PLA takes age as a primary category for the distribution of health care benefits, while CNU takes need as the primary, indeed the only relevant criterion for receipt of benefits. For example, under CNU, those who are fortunate enough to be quite healthy throughout their lives, and who consequently don't need the same resources that some others will need, will not be allocated the same 'fair share' of resources, for over the course of their lifespan, they may not need their fair share. Instead, the resources they might have used will be spent on someone else who will benefit more. Why does Daniels reject such an approach? Under a utilitarian approach like CNU, each individual may not receive her fair share of resources - for example when these resources could be transferred to others who need them more, and who will benefit more from receiving them. In an interesting passage, Daniels explains that utilitarian approaches inappropriately treat transfers between different people in a way that is only appropriate for transfers within an individual life:

The utilitarian who emphasizes 'quality adjusted life years saved' is interested in showing that a policy maximizes overall utility. In contrast, the prudential argument says that age-rationing would be acceptable when it does better for each of us to budget resources over the lifespan in a certain way. The prudential argument thus explains the intuition that the British system can be defended on the grounds that it 'does more good.' It does so for each of us. Although the utilitarian account of doing more good in the aggregate allows us to take from some people to give to others, the prudential account avoids crossing the boundaries between persons in that objectionable way (PK 95).

The general point is a familiar one, and it is one emphasized by Daniels in other parts of the book: simple utilitarian views ignore the boundaries between persons in a way that many of us find counterintuitive and morally objectionable. One context in which this observation is important is that of compensation: 'Someone's burdens cannot be compensated by benefits to someone else.'<sup>11</sup> But this kind of objection does not apply to CNU, which does not aim to maximize aggregate utility, but to minimize each person's expectation for disadvantage due to disease or destitution. This cannot sanction 'crossing the boundaries between persons' in the objectionable way that Daniels describes.

Daniels claims that his account will be better for each, even though he

claims that the QALY based account would be better for all. This indicates that he means to compare his view with a simple utilitarian view that seeks to maximize overall well being, instead of maximizing individual well-being from behind a veil of ignorance as I have suggested above. A simple utilitarian view might offer benefits to those who are best off, as long as they were more efficient at transforming resources into QALYs. This would indeed be an example of inappropriately ignoring the boundaries between persons. But CNU is different from the simple utilitarian view Daniels criticizes. Its emphasis on the minimization of misery and deprivation rather than on the maximization of well-being means that it will not sanction transfers to those who are already quite well off when resources could be used to improve or lengthen the lives of those who are badly off. And since expected disutility is minimized from behind a veil of ignorance like the one incorporated by Daniels, the CNU will not allow inappropriate interpersonal trade-offs.

But is CNU fair? One might argue that it is not, since those people who are fortunate enough not to need their fair share of medical resources will not receive their share. However, it is arguable that this does not imply that they are treated unfairly. For CNU inherits a conception of procedural fairness in two different respects: first, inasmuch as the idea of choice from behind a veil of ignorance incorporates a conception of fairness, CNU will be fair in this sense. In addition, while each person may not receive a fair share of resources, each can reasonably regard the system by which these resources are distributed as a procedurally fair system, since the system provides each with the same benefit (a low expectation of suffering from disease or deprivation).

CNU does allow some kinds of tradeoffs to be made between persons: those whose needs can be met by available procedures, and who would benefit more if the available funds were spent on them will receive care in preference to others whose needs are less easily met, or who would benefit less. But this is not the kind of interpersonal tradeoff that makes some utilitarian views objectionable. After all, from behind the veil of ignorance, one might just as easily be the fortunate person who would benefit less from care and who therefore needs it less, as be the unfortunate person who needs care more and who would benefit more from it. From behind the veil of ignorance, where we are denied knowledge of the particularities of our own circumstances, CNU leaves each of us better off. Once the veil has been lifted, we may find that the principles we have chosen imply that we will be allocated a relatively small share of the total resources available (for example, if we were fortunate enough to be quite healthy throughout our lives), but we could not claim at that point

that these principles are unfair or unjust. Like Daniels' view, the utilitarian view under consideration avoids crossing the boundaries between persons in objectionable ways.

However, CNU will allow trade-offs among the competing needs of different claimants, and these trade-offs may well be made in ways that resemble the standard utilitarian QALY-maximization approach. For example, CNU may well recommend, under constrained circumstances, that certain procedures should be rationed. But it is often argued that it would be inappropriate to include rationing schemes in health care distribution to the needy or the poor, since (so it is argued) it would be unfair to impose rationing on those who are poor while not imposing rationing on those who are better off. The point is one that is frequently misunderstood, and which commonly arises in discussions of health-care rationing. This objection interprets health care rationing as a cost to individuals, and claims that such costs should be equalized across persons. But rationing is not a cost of this kind. Those whose health care access is determined by a QALY-based rationing scheme are individually better off than they would have been under any alternative institution provided with the same budget. Appropriately managed QALY-based rationing would minimize each representative individual's expectation that her life will be blighted or cut short by disease or deprivation. It follows that alternative distribution schemes offer each individual a worse expectation in terms of the quality and length of life. To the extent that Daniels' scheme is different from CNU, its implementation would involve an increase, for each person, in the expectation that she will suffer from ill health or deprivation. How will this lower expectation be justified to those who must endure it? And why would prudent agents, situated behind a veil of ignorance, choose Daniels' account over CNU?<sup>12</sup> Since Daniels justifies the principle of Age-Relative Equality of Opportunity on the ground that it would be better for each person, his own justificatory criteria favour CNU over the Prudential Lifespan view he defends.

### *Second Objection: Local v. Global Approaches to the Allocation Problem*

There is a second problem with Daniels' suggestion that the problem of age-justice should be framed within the assumption that a more general theory of justice already answers the more general distributive questions. As noted in section V above, this implies unidirectional influence of the account of age-justice by the general theory of justice. It rules out the possibility that our understanding of age justice might lead us to revise our understanding of the

general theory of distributive justice. In an important way, this limitation is arbitrary, and it is especially surprising that Norman Daniels would have incorporated it, since he has, in other works for which he is quite famous, argued for a theory of moral reasoning that is far more flexible than the one he employs here.<sup>13</sup> The assumption that we can appropriately address the question of age-justice separately from other more general problems of distributive justice implies that there is no need to compare age-relative needs with other kinds of social needs that would be addressed by a general theory of justice. In consequence, it is impossible to weigh the importance of these needs against one another, or to balance and make trade-offs among them. Daniels' account should be rejected by Rawlsians, since it makes it impossible to apply the 'difference principle', which insists that social and economic inequalities should be arranged so that they provide maximal benefits for the worst off members of society: if Daniels' framing assumption were abandoned, we might find that judgments concerning the size of the budget to be allocated for lifetime health care needs might depend on a further judgment that this amount of total allocation would provide more benefits for the worst off than any alternative. Different ways of allocating this total might serve this end differently, so the total health care budget available to address the problem of age-justice might partly depend on the nature of the allocative scheme we choose. Such arguments are inappropriately shut off by Daniels' framing assumption.

Framing the problem of age-justice as Daniels does would make it impossible for health care distribution to focus on human need as a primary criterion for distribution, since it assumes that individuals will all have a valid claim to some share (a 'fair' one) of social resources. While it is true that people have different kinds of needs at different stages of life, those who are wealthy or fortunate may have resources of their own that will allow them adequately to respond to their changing needs. What share of social resources should be used to provide health care and income support for those who are already quite well off, and able to care for their own needs? We might want at least to consider the possibility that this question should be answered as follows: Social resources should be used to respond to the needs of those whose needs would otherwise go unmet. Those who are well enough off that they can care for themselves have no claim at all on social resources when those resources could otherwise be used to help others who are worse off, since their needs are unmet.

*Second Pairwise Comparison: Prudential Lifespan v. Sufficient Minimum Safety Net*

It is standard to compare views like Daniels' to a libertarian alternative that would leave all claims to be arbitrated by the market. It is clear that Daniels sees this strong libertarian view as an important alternative, since he offers powerful arguments against it (PK 37-39, 48-49, 68-69, 135-138). In general, many people find extreme libertarian views to be unacceptable, because of the very real risk that the claims of the truly needy would simply go unmet under a libertarian regime. The implications of libertarian policies are especially harsh for poor children, who cannot reasonably be held responsible for their plight, and who may be denied the opportunities and resources necessary to improve their situation, since a libertarian regime would take no steps to provide such positive benefits. If it is appropriate for a political regime to protect citizens against arbitrary and undeserved suffering and deprivation, then the strong libertarian view must be rejected, as Daniels and others have effectively argued. In pairwise comparison with Daniels' view, this strong libertarian view fares badly.

But there is an alternative that lies midway between strong libertarianism and Daniels' Prudential Lifespan Account: it is a view that includes a welfare safety net to insure that no one will fall below a sufficient minimal (SM) level of well-being and opportunity, but beyond this safety net, leaves individuals to care for themselves. Call this view SM. Such a view has been advocated by such liberal philosophers as Allen Buchanan (1984, 1987), Alex Rosenberg (1995), and Jeremy Waldron (1986), as well as by more libertarian-leaning scholars as Loren Lomasky (1995), John Gray (1993), and Friedrich Hayek (1960). This view has historical roots in the work of John Locke (1693/1697, 1663/1690), who argues that the truly needy must be provided with such goods as are necessary to make it possible to take care of themselves. Beyond the safeguards for the truly needy implicit in this basic safety net, SM would protect negative liberties, and would leave claims to the distributive mechanism of the market.

Like Daniels' account, a view like SM would need to take into account the different needs that people have at different points in life: children have special needs for education and play, while adults have special need for employment opportunities, and the elderly for social support and health benefits. Critics of views like SM have pointed out that health care needs are not like other needs, nor are they mere 'wants' or 'preferences'. Health care needs have a special urgency, and are associated with our ability to take effective advantage of

opportunities that present themselves to us. But to this extent, SM may also be concerned with health care needs, since in its most plausible incarnation, SM insists that people must possess adequate substantive opportunities, not merely formal opportunities. It is not sufficient, on this view, merely to argue that people can take care of themselves as long as they have opportunities to participate in a fair economic market. If the background conditions are not in place that make it possible for people to take advantage of the opportunities that should, on this view, be provided, then their opportunities are not really adequate at all. When people's opportunities are inadequate, or fall below the minimal accepted level, then they merit aid and compensation. Daniels assumes that a broader theory of justice will include a principle of fair equality of opportunity. Only conceptions of justice that include such a principle will also include the Principle of Age-Relative Fair Equality of Opportunity he defends. But SM is not concerned with equalizing opportunities, but instead strives to insure that no one lacks adequate substantive opportunities. If we could insure that every person had adequate opportunities to pursue a reasonable conception of the good, there would be no need to curb the opportunities of those who were blessed with more than adequate opportunities of this sort. Once people are in a position to determine for themselves the shape their lives will take, and to rationally revise and pursue their goals as they see fit, it is permissible, on this conception of justice, to leave them alone. Once all are adequately provided for, there is no need to attempt to transfer opportunities or goods from those who are better off to those who are merely well-off. Over the lifespan, SM would guarantee that individuals have opportunities to provide for their old age, and will insure that the fundamental needs of the elderly do not go unmet. But beyond this, SM leaves people to care for themselves and to plan for their own futures.

How does such an alternative compare to Daniels' Prudential Lifespan Account? In many respects, the two views are quite similar: Daniels' PLA also includes a safety net to respond to the needs of those who are badly off. Recall the two principles that constitute the core of the Prudential Lifespan Account:

**Income Preservation Principle:** Each individual should have available at each stage of life, an adequate income to pursue whatever plan of life he may have at that stage of life (PK 121).

**Principle of Age-Relative Fair Equality of Opportunity:** Social resources should be allocated so as to insure that everyone can attain the normal age-relative opportunity range for his or her society (PK 73-82).

In place of these principles, the sufficiency alternative includes principles that guarantee a basic minimum:

Minimal Income Preservation Principle: Each individual should have available, at each stage of life, an adequate income to meet basic needs and to pursue a minimal but adequate range of reasonable life plans. Principle of Age-Relative Adequacy of Opportunity: Social resources should be allocated so as to insure that everyone has adequate age-relative opportunities, throughout the lifespan.

But how are opportunity levels measured, and what level is adequate? It has sometimes been argued that such threshold levels must be arbitrary. Harry Frankfurt (1988), who in fact advocates a view quite similar to the one under discussion, concedes that 'Calculating the size of an equal share is plainly much easier than determining how much a person needs in order to have enough.'<sup>14</sup> But Rosenberg (1995) points out that the difficulty of identifying equal shares may be just as formidable as that of identifying a basic sufficiency level, and others, including Nussbaum (1992, 1995) and Sen (1985, 1990) have provided well-developed accounts of the way in which a non-arbitrary sufficiency level might be articulated. It is far from clear that all such indices will be arbitrary.<sup>15</sup>

In general, SM imposes lighter burdens on people as they pass through their working years. But it also provides smaller social compensatory benefits than Daniels' alternative, since the minimal safety net will most likely be less generous than Daniels' Income Preservation Principle (and perhaps less generous than CNU). However, to this extent, SM gives people greater freedom to choose how their income should be distributed over their lifespan. It allows those who are risk averse to put off present welfare in planning for the future, and it allows others to enact their preference for benefits received earlier in life. Daniels' account of prudence, which regards as irrational all choices that would result in unequal distribution of well-being or opportunity over the lifespan, would protect people against the risks involved in such choices by refusing to allow such risks to be taken. To effect such protection, individuals would presumably be taxed at a higher rate during their working years, and would receive greater compensatory benefits later in life. While the safety net ensures that no one will be left with fundamental needs unmet, SM gives people more autonomy to determine the shape of their own lives, without putting people at increased risk that their basic needs will be unmet.<sup>16</sup>

It should be noted once again that SM differs from the libertarian alternative in at least two important respects: First, SM includes positive rights to a basic minimum income and adequate opportunity, while standard libertarian views

include no positive rights at all. Second, SM endeavours to insure that no one shall lack an adequate range of appropriate substantive opportunities at the different life stages. It is not sufficient that people have a formally adequate opportunity range, they must also possess the social and material resources necessary for them to make effective use of the resources available to them.

One important category of opportunity, in this regard, is the opportunity to make plans for one's own old age. Compared with Daniels' PLA, SM leaves people greater autonomous control over the resources they command. Therefore SM allocates a greater degree of responsibility to individuals, providing them with a greater incentive to plan for their own old age. Recognizing that the state will at most provide minimally adequate support, people will recognize that they need to use their substantive opportunities wisely if they would like to live better, in their later years, than that minimum would allow. The SM welfare net provides only for the truly needy. In fact, SM does not include 'age' as a relevant criterion for distribution except inasmuch as age exerts a qualifying effect on needs, which (as in Daniels' view) are relativized to age groups. According to SM, the primary category to be considered, from the perspective of distributive justice, is that of need.

In practical terms, how different are SM and PLA? Like SM, Daniels' PLA also includes limits on the extent of benefits one might receive under the principles he recommends. In articulating his Income Support Principle, he points out that possessing and 'adequate income to pursue whatever plan of life one has' is relative to one's lifetime fair income share (PK 121). The same limitation is imposed on the Age-Relative Equality of Opportunity Principle. The level of benefit supported by this principle would depend on the 'normal age-relative opportunity range' for one's society. If these limitations are interpreted as strict limitations, set at the level of the 'basic minimum' guaranteed by SM, then the two views might not differ much at all in their implications. But the way Daniels has articulated these principles, they leave open the possibility that one might be entitled to far more than SM would allow.

In sections III and IV above, I argued that the principles that constitute the PLA are poorly supported by Daniels' argument, since he employs a flawed account of prudence. If we substitute a more adequate theory of prudence, and imagine the choice from behind Daniels' veil of ignorance, what reason is there to believe that prudent agents would choose the PLA rather than the alternative I have outlined here? Daniels' view would guarantee equal opportunities over the lifespan, while SM would permit greater lifetime inequalities. Since, as I have argued previously, there are circumstances in which it would be rational



for a person to choose to distribute well-being and opportunity unequally over the lifespan, this consideration favours SM over PLA. would provide individuals with less incentive to plan for their own futures, while SM leaves open the possibility that some people will be less well-off in old age than they would have been under PLA. Both views guarantee that basic health care needs will be met. It can be argued that SM achieves the most morally significant aims of PLA (protecting the needs of the vulnerable) while providing individuals with an additional motive for private saving. Once again, these considerations favour SM over PLA.

I cannot prove that SM would be chosen in place of PLA by prudent agents behind Daniels' veil of ignorance. My claim, at this point in the argument, is thus less bold than that of Daniels: I contend that nothing in Daniels' account shows that such agents would choose his Prudential Lifespan Account over the sufficient safety net I have described. If, as Daniels claims, 'Whatever is prudent (from behind the veil of ignorance) constitutes what is just' (PK 92), it follows that if SM could be chosen from this perspective, then SM is not unjust. If either PLA or SM could be chosen from behind the veil of ignorance, then it would follow that PLA and SM are joint members of the set of permissible conceptions of age-justice.

In comparison to CNU, SM is somewhat less flexible: in particular, SM can be applied only when there are sufficient social resources to provide each person with an adequate minimum, and gives no guidance when resources are too meagre for even this. When resources are adequate, as (I would argue) they are in most industrialized nations, CNU and SM both imply that we should provide each person with an adequate minimum. But in extremely wealthy societies, CNU might sanction more generous benefits than the basic adequate minimum recommended by SM. From behind the veil of ignorance, the choice of SM over CNU will imply a higher risk that one will suffer due to ill health or material deprivation. In fact, many of the same reasons that favour CNU over PLA from behind the veil of ignorance are also good reasons for preferring CNU over SM.

But we are not behind the veil of ignorance, and when we move from description of a philosophical ideal to the context of practical political argument and policy choice, there are good reasons to favour SM over either PLA or CNU. Because it places strict limitations on public expenditure, SM will be favoured by those who might be wary of utilitarian solutions like CNU. As a target for political reform of current institutions, SM is much better off than PLA, because it represents a more practical and achievable political ideal.

## **Practical politics, basic minimums, and the needs of children and the elderly poor**

In the United States, recent policy changes have generally protected benefits for the elderly. Both Medicare and social security are considered to be political hot-potatoes, too risky to touch. Social Security benefits are often quite generous, typically yielding far more to older beneficiaries than they could have gained had they shrewdly invested their social security payments in the stock market rather than paying into the Social Security fund. Programmes for needy children, on the other hand, have suffered serious cuts, and many members of the new majority, and several contemporary presidential hopefuls, speak of rolling back welfare benefits for poor children and poor families altogether. In the current political climate, programmes that focus more closely on need as a primary criterion for eligibility seem more likely to be cut than programmes that focus on age. Suggestions that Social Security or Medicare might be reformed by instituting more need-based eligibility criteria have been met with strong political resistance. Consequently, the needs of the elderly poor are given little priority over those of the elderly rich. The poor elderly are a growing group in the United States, and institutions have not changed to keep pace with changing needs. In general, it is the poor, as a group, rather than the elderly, as a group, whose needs are inadequately addressed by current institutions.

Given the sources of political power, public choice economists would tell us not to be surprised by these inequities: we should predict the behaviour of our representatives by assuming that they are rational vote-maximizers; so they are likely to be responsive to the interests of those who vote, and unresponsive to the interests of those who don't. Children don't vote. The poor typically don't vote. The impoverished elderly are not, of themselves, a powerful interest group, even though the AARP is a strong political voice, promoting the interests of the elderly as a class. The result is that the redistributive institutions in the US are more responsive to the needs of the elderly as a broad undifferentiated group, and are frequently inadequate in their response to the needs of the elderly poor. And these institutions are woefully inadequate in their response to the needs of poor families in general, and poor children in particular. This is one of the most disturbing effects of poverty: poverty deprives people of substantive opportunities even when formal opportunities remain. To point out that the poor have the same voting rights as everyone else is to ignore the fact that people can be effectively disenfranchised by poverty and need.

The US Social Security system has also come under criticism. As it is currently run, social security benefits are paid directly from the payments of younger workers. As long as the number of workers is relatively large, and the number of retirees is relatively low, this system will work well. But as the Baby-Boomers retire, the proportion of workers to retirees is expected to diminish rapidly. If the burden on workers increases, as some economists expect, the system will eventually become insolvent, so that income support will no longer be available to support later retirees, who will have spent large portions of their earnings to support the retirement of wealthier retirees who received their benefits earlier. If this prediction comes true, it will be uncontroversially unfair to those whose burdens will have outweighed their benefits, and whose urgent retirement needs may go unmet. Since they will have been taxed for the benefit of the better off cohorts that preceded them, they may be expected to resent this: in many cases, those who receive Social Security benefits are much better off, both in terms of current wealth, and in terms of lifetime prospects, than the workers who pay their benefits.

Such regressive transfers could never be sanctioned by a conception of justice that holds human needs and lifetime prospects to be the primary criteria for distribution of benefits. In the US, the more important current social division is between those who have access to resources and adequate opportunities and those who do not, not the division between young and old. It is more important to get access for the poor and disempowered than it is to get equal access for the elderly as an undifferentiated group, regardless of their prudent use of their own past opportunities and regardless of their current means and current needs.

These considerations support the claim that need is more important than age as a criterion for distributive justice. This highlights a distinct advantage that both CNU and SM have over Daniels Prudential Lifespan Approach: both of these theories incorporate need as the centrally important criterion for receipt of social benefits. If needs are a primary consideration, then questions of age-justice cannot be separated from issues in the general theory of justice as Daniels claims. It is clear from Daniels' discussion of age-justice that the cases to which he imagines his theory applying are cases for which tradeoffs must be made between old and young, sometimes between the wealthy old and the needy young. If Daniels assumes that such situations might remain after general justice has been achieved, then he is assuming without argument that a theory of general justice cannot take need as a primary criterion for distributive justice, for such a general theory would not make a sharp separation between the question of justice between age-groups and the general theory of justice. Since

both CNU and SM take needs to be primary, it follows that Daniels' assumptions prevent him from even considering these views.

I have argued that Daniels' theory focuses on age in the wrong way, and have claimed that US institutions designed to serve the elderly are likewise responsive to age in the wrong way. Current institutions often benefit the well-off at the expense of others who are less well-off, and no theory of age justice, including that defended by Daniels, can justify such transfers. Does it follow from these considerations that the US would do well to dismantle the institutions that have been set in place to protect the interests of the elderly? Here is Daniels' sensible response:

Our concern about increased poverty among children and our legitimate worries about the stability of the transfer systems that will soon encounter the baby boom cohort should not tempt us to undermine what is valuable in our collective solution to the age-group problem. At the same time, we must devote adequate resources to meeting the needs of poor children - indeed, of the poor at any age. I am sceptical that dismantling the protection we have afforded the elderly poor will really be followed by more adequate transfers to the remaining poor (PK 138).

Our current institutions would more nearly achieve what justice requires if they were more effective in their response to human needs, and especially to the urgent needs of poor children and the impoverished elderly. If budgets are tight, and social resources are inadequate to meet the needs of both poor children and the poor elderly, we might in principle have good reason to favour the interests of children over the elderly. But from the practical perspective and in the context of current political disputes, we would do well to promote policies that aim to provide a basic minimum to everyone, as SM recommends.

### **Conclusion: Ideal theory and the constraints of practical politics**

The most commonly expressed objection to the philosophical use of 'Ideal Theory' is that such theory is unacceptably utopian. Rawls (1971, 1993) has been criticized on the ground that his theory is so abstract, so distant from the imperfections of political reality, that it can provide no guidance for real people or for the structure of real institutions. In some circumstances, there is an effective response to such critics: Rawls argues that the ideal he articulates provides us with an account of the broader aims that should guide us in

reforming our institutions. A clear account of the ideal can sometimes provide us with a better understanding of the ways in which our institutions fall short, and how they might be improved. In other cases, the objection has greater force: if a theory is so removed from reality that it fails to take into account the fragility of democratic decision making and the limits of political possibility, then it is utopian in a more pernicious sense, and may provide little guidance for policy makers. A complete theory should help us to make policy decisions even when ideal justice is unachievable.

There is reason to believe that an ideal egalitarian account of justice between age groups may be unachievable in democratic countries, for there is a serious tension between the requirements of justice and the likely outcome of democratic processes. The fact that the young, and future generations, do not vote means that their interests are under-represented in democratic procedures. And while an ideal theory of intergenerational fairness might consider the age problem by comparing the lifetime prospects of different birth cohorts, in practical political contexts the interests of the young and the interests of the old do conflict. For it is in the interest of those who are currently old to institute policies that increase benefits to the elderly regardless of the burden such institutions would place on younger workers. It is in the interest of younger workers to insure that burdensome policies to benefit the elderly should not be put in place, even if they are just, until these younger workers are themselves at the point of becoming elderly beneficiaries. The only group whose interests would be served if just institutions were set in place immediately is the very young, and even their interests would be better served if such institutions could be set in place much later, just before their retirement. Time moves in one direction, and as people get older, the interests of their group do change. If we assume that people will vote for policies that are in their interest, then we should predict that the policies that would get the broadest democratic support would be those that sacrifice the interests of the very young in favour of the interests of the moderately old, and especially in favour of those who are elderly. What is to be done if just policies are unlikely to be the object of democratic choice?

Daniels addresses this question with respect to the problem of health care rationing:

Suppose that the only way for an age-rationing scheme to remain stable is for the grounds for the rationing to be disguised, and yet there are good prudential reasons for implementing such a scheme. Is the scheme just? In general, I think that principles of justice and the reasoning for them must be public, and that the conditions of publicity are rather stringent. (...) This does not mean, of course,

that the whole public must agree with or accept the scheme. Nor does it mean that a proposed policy is not a just one if it cannot be made acceptable to a particular society: It may be that what is ideally just is not feasible under some conditions, that is, if the publicity constraints are adhered to. We then need an account of what is permissible when what ought to be justifiable is politically infeasible. Here philosophers have generally fallen silent, and I shall too (PK 97).

Can philosophers afford to remain silent on such issues? What are we to think of an ideal conception justice that requires democracy and publicity, but also requires institutions that could not be the object of democratic choice if their structure were publicly known? Under such circumstances, we might either conclude that the conception of justice is flawed, or that the human condition is unfortunate. In either case, it would be appropriate to look toward a broader normative theory in search of steps we might take to improve our institutions, even if we cannot entirely mend them. Working to insure that basic needs are met, and to guarantee universal access to a basic minimum of care might not achieve the highest social ideal, but it would be a dramatic and badly needed improvement on the status quo. For those of us who are young, or who care about the prospects of our children as they grow into adults and on to old age, such changes would be prudent as well.

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## Notes

1. Daniels (1988) p. 44.
2. Fairlie (1988).
3. 'Consuming Our Children', Forbes, 14 Nov. 1988.
4. Norman Daniels writes: 'The ageing of society forces major changes in the institutions responsible for social well-being. As the 'age profile' of a society-- the proportion of the population in each age group - changes, social needs change. As society ages, proportionally fewer children need education, fewer young adults need job training, but more elderly need employment, income support, and health-care, including long term care. Changing needs find political expression. Strong voices press for reforms of the institutions that meet these needs. At the same time, advocates for existing institutions and their beneficiaries resist change. The result is a heightened sense that the old and the young are in conflict, competing for a critical but scarce resource, public funds that meet basic human needs' (Daniels, (1990) p. 325).
5. See Daniels (1988), pp. 40-51, and also Jecker (1989), pp. 657-8. Daniels does not claim that prudent agents would use maximin reasoning from behind the veil of ignorance, as Rawls (1971) argued earlier. See Daniels (1988), pp. 88-89.
6. A 'conception of the good' may be understood as 'an ordered family of final ends and aims which specifies a person's conception of what is of value in human life, or alternatively, of what is regarded as a fully worthwhile life' Rawls (1989) p. 14.
7. See Buchanan (1975) for a similar argument. Buchanan argues that concern for one's changing interests over time constitutes a non-Rawlsian justification for the veil of ignorance.
8. Buchanan (1975), 398-9.
9. Daniels' methodology also rules out the more standard utilitarian view that social resources should be used in such a way that they maximize each person's expected benefit. Unlike Daniels's account, this classical utilitarian alternative might also permit distribution on the basis of need.
10. Several utilitarians have argued that it would be rational, from behind the veil of ignorance, to simply maximize utility (For example, Harsanyi (1982)). The view discussed here differs from Harsanyi, since I will recommend a negative utilitarian view that aims to minimize misery rather than maximizing well-being.
11. See Parfit (1984) p. 337, and PK p. 170.
12. A 'Pareto improvement' is a change of circumstance that is better for at least one person, and worse for no one. A strong Pareto improvement is a change of circumstance that is better for literally everyone involved. Daniels ((1988) p. 95, fn.

5) claims that his view represents a strong Pareto improvement over the current US system. But CNU would seem to represent a strong Pareto improvement over PLA, since it decreases each person's expectation of suffering and deprivation.

13. See Daniels (1979, 1980).
14. Frankfurt (1988) p. 134-36, quoted in Rosenberg, (1995) p. 66.
15. See Nussbaum and Glover (1995), and Nussbaum and Sen (1993) for arguments that such an account represents an improvement over standard utilitarian, egalitarian, and Rawlsian alternatives. In fact there are a variety of plausible alternative ways to articulate a threshold minimal level: one might set the minimum (i) at the level at which individuals are capable of being autonomous (Rawls (1971)), (ii) the level at which all basic needs have been met (Crocker, (1992) discusses such a view), (iii) at universal possession of basic resources (Dworkin, (1981)), or (iv) of opportunities (Cohen, (1989)), or (v) of the ability to exercise certain basic human capabilities (Sen, (1985, 1990)) or (vi) to function in basic, essential human ways (Nussbaum, (1992, 1995)). There is no time to sort out these alternatives here, but I will record my own preference for an opportunity-qualified version of Sen and Nussbaum's 'capability view'. At one level, this view is relativised to societies, like Daniels' Principle of Age-Relative Equality of Opportunity, but is not subject to the problems of circularity that face Daniels' view. See Buchanan (1984), Daniels (1985b) response, and note 11 above. See also Wolf (1996) for some further discussion of the minimum level, as related to negative utilitarian views.
16. This view is also consistent with a safety net defined in terms of fundamental human capacities (Nussbaum (1992)), or functional capabilities (Sen (1985, 1990)). In fact, I prefer a version of SM that is put in such terms. For now, I will use 'needs' to stand in for the broader conception of human well-being that Nussbaum and Sen incorporate in their 'Capability view'. See also Crocker (1992).

# Ageing, Autonomy and Resources

*Edited by*

A. HARRY LESSER

*University of Manchester*

**Ashgate**

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1998