

Age, Equality, and Cultural Oppression: An Argument against Ageism

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Abstract

The concept of 'ageism' has often been thought to be of limited moral concern, especially in comparison to other forms of discrimination such as racism and sexism. Nevertheless, there are also those who believe that ageism is morally significant, and there are diametrically opposed views within liberal and egalitarian theory as to whether age discrimination is or is not just.

This thesis has two objectives. Firstly, it seeks to overcome the apparent vagueness of the concept that has given rise to such diametrically opposed views concerning ageism by examining exactly what the phenomenon involves. It defines the wrongfulness of much age discrimination as originating in either the nature of the reasons for which people discriminate against the old or the nature of the consequences for the individuals affected. In the course of the thesis I make several important distinctions, the most important of which are between the social and moral worth of a person, and between the synchronic and diachronic interests of a person. These distinctions allow us to distinguish between a culturally oppressive ageism and ageism that is justified by reasons of equality and efficiency. The former is intrinsically morally wrong, the latter extrinsically wrong.

The second aim of the thesis is to develop an anti-ageist ethical principle capable of challenging both forms of ageism in a comprehensive way, and which is consistent with a broader liberal egalitarian political theory. This is achieved by drawing on the distinction between the irreducible nature of each person's synchronic and diachronic interests. I have identified the principle that we should protect the synchronic interests of older persons with a democratic social egalitarianism that seeks to equalise the social relations between citizens rather than concentrating upon an equality of distribution. It is in this way that I also connect the debate about the morality (or otherwise) of age discrimination with debates within contemporary liberal egalitarian philosophy.

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For Joanna and Jessica

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Introduction

As with any other issue of political morality there are a range of positions that might be taken on the issue of ageism. However, unlike other forms of discrimination, age discrimination seems to illicit diametrically opposed viewpoints within mainstream political thinking. Many writers, particularly those involved in medical ethics and healthcare economics, justify adverse discrimination against the old as a necessary, if unfortunate, consequence of pursuing justice between the complete lives of separate individuals. Others, however, express the view that ageism is ‘no less vicious a form of discrimination than racism and sexism, and there can be nothing ‘fair’ in its application to resource application.’¹ The fact that age discrimination may be either wholly justified or wholly unjustified makes it an interesting subject of study. Moreover, part of the reason for this disagreement may be that thinkers either justify or condemn age discrimination without really examining what it involves.

My own thinking about the morality or otherwise of age discrimination was first aroused by reading an article by Geoffrey Cupit which tries to make intelligible the intuition held by some that age discrimination is unjust.² Cupit notes that ‘the alleged injustice of age discrimination presents a puzzle’ because the ‘standard argument against discrimination – the argument from equalizing benefits – seems not to apply.’³ It doesn’t apply because equalizing benefits over the complete lives of separate

¹ Oliver Leaman, ‘Justifying ageism,’ in A. Harry Lesser (ed.), *Ageing, Autonomy and Resources* (Aldershot: Ashgate, 1999): 180-187, p187.

² Geoffrey Cupit, ‘Justice, Age, and Veneration,’ *Ethics* 108 (1998): 702-718.

³ *Ibid*, p702.

persons might actually *justify* age discrimination rather than challenge it. It does this for the obvious fact that each of us has a turn to be old, and, by taking turns to be well-off or badly-off, temporal or synchronic inequalities will even out over the course of people's lives. Thus, as Cupit notes, to say something is wrong with age discrimination seems to suggest there is something wrong with taking turns.

The argument that Cupit develops in order to express the anti-ageist intuition is that of status. He claims that each of us has an equal moral status, and the injustice of age discrimination has its real source in that equal status not being respected throughout one's life. Thus, age discrimination is not a comparative injustice in the same way as sexism or racism are, and the injustice it involves is 'not in the inappropriate treatment of some people in comparison to others, but as far as it is comparative, in the inappropriate treatment of people in comparison to their earlier (or later) selves.'⁴

While defining status is a complex issue, what Cupit's argument implies is that age discrimination is wrong because it treats persons differently at one point in their lives to the way they are treated at another point.

However, Cupit, along with almost every other writer on the subject, assumes that there is only one form of ageism, and that it is either defensible or indefensible depending upon the force of the arguments provided. However, it seems to me that there are at least two very different categories of ageism which are wrong for different reasons. One category of ageism is similar to sexism and racism in that it involves negative cultural judgements regarding the moral and social worth of the old, just as racism and sexism do for blacks or women. I will argue that this form of 'cultural

⁴ Ibid, p709.

ageism' is *intrinsically* morally wrong. The second category of ageism does not involve these judgements. Instead, it justifies age discrimination on the basis that it either ensures a greater diachronic equality of benefits over the complete lives of separate persons, or a greater efficiency of distribution of scarce resources. Discrimination motivated by both efficiency and diachronic equality are not intrinsically wrong because they do not involve negative moral judgements regarding those discriminated against. Nevertheless, as I will argue, these forms of age discrimination may still be wrong for *extrinsic* moral reasons: i.e. that they treat people inappropriately in comparison with their earlier selves. What it means to be treated inappropriately will be explained below. Nevertheless, once it has been established what ageism is, we need to show how it can be challenged within egalitarian political theory, bearing in mind Cupit's insight that the aim to equalise benefits endorsed by most contemporary egalitarians will actually condone that form of discrimination. I should also note here that the thesis focuses mainly upon wrongful discrimination motivated by normative egalitarian reasons, or 'egalitarian ageism', rather than efficiency reasons.

The purpose of the thesis, therefore, is twofold. Firstly, following the efforts of Cupit, it seeks to make more intelligible the intuition that some forms of age discrimination are morally wrong. One caveat that should be noted is that I understand the term *age-discrimination* to involve any discrimination against either the old or young, while the term *ageism* refers to the two wrongful forms of discrimination against the old outlined above. Once an anti-ageist ethical view has been structured and defended the second aim of the thesis is to situate that view within an egalitarian political theory,

one that would both defend anti-ageist social policies and challenge the age discrimination that other egalitarian theories justify.

Chapter one begins by discussing some of the social contexts in which age discrimination is often thought to either currently exist or to be theoretically justified, and it aims to show how cultural ageism and egalitarian reasoning motivate ageist policies. The chapter then reviews the recent emergence of anti-ageist legislation, identifies the inadequacy of that legislation, and finally outlines the challenge that anti-ageists face in the light of this discussion. That anti-ageist challenge is to develop an ethical argument that can achieve three things: It must suggest a strategy that can challenge negative cultural stereotypes while not impinging upon the liberty of individuals; it must suggest principles that constrain egalitarian distributions to the extent that they justify age discrimination as a consequence of diachronic equality; and those same principles would need to constrain considerations of efficiency.

Chapter two attempts to clarify the debate over the justness of age discrimination by first investigating the particular interests of individuals that are harmed by ageist policies. This project is at the heart of constructing an anti-ageist ethical position, and it makes two important distinctions: firstly, between judgements of moral and social worth; and secondly, between the synchronic and diachronic interests that a person has. The difference between moral and social worth is the difference between *the intrinsic worth of a person* and the perceived *instrumental worth of a citizen* to society. Someone may possess either one without the other. Liberals would always refute judgements that certain citizens embodied negative moral worth merely on account of their age. I would argue, however, that both negative *moral* and *social*

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judgements constitute wrongful cultural ageism, and that anti-ageists must make a case for challenging them both as distinctive elements of the same phenomenon.

The distinction I make between the diachronic and synchronic interests of persons draws on the work of several contemporary philosophers.⁵ These thinkers claim that on the one hand individuals have long-term, life-time projects and goals that we each have diachronic interests in pursuing, and that those interests include such things as having access to as wide a range of opportunities as possible to follow careers and develop relationships, and in having the material benefits to facilitate the pursuit of those opportunities. On the other hand, however, individuals also have synchronic interests, and a certain class of these are fundamental in the sense that they have special moral concern. These are the interests we have at any temporal moment of our lives to have sufficient resources to ensure our basic needs are met, to be at least minimally autonomous, and to enjoy the social conditions of self-respect. I follow David Velleman and Elizabeth Anderson in claiming that these diachronic and synchronic interests are not reducible to one another, and in some cases may even conflict. It is my claim that most contemporary egalitarian theories give exclusive concern to a diachronic equality of opportunity, and that as a consequence the fundamental synchronic interests of older individuals are often neglected. The final part of the chapter structures a classification or taxonomy of the various forms of age discrimination, which is grounded on both the reasons that motivate them and the degree to which their consequences are harmful.

⁵ J. David Velleman, 'Well-Being and Time,' in his *The Possibility of Practical Reason* (Oxford: Clarendon Press, 2000): 56-84; Alasdair MacIntyre, *After Virtue: A Study in Moral Virtue* Second Edition (London, Duckworth, 1985), chapter 15; Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, Mass.: Harvard University Press, 1993).

It is this idea that individuals have both synchronic and diachronic interests, and that each person's fundamental synchronic interests have an equal claim of justice, that I think makes sense of Cupit's claim that the injustice of age discrimination lies 'in the inappropriate treatment of people in comparison to their earlier (or later) selves.' The source of injustice is found in the degree to which the synchronic interests of the young are respected while the same interests of the old are not. If these synchronic interests are equally important for all persons irrespective of their age, then it is morally wrong to neglect the interests of some people and not others on account of their age. And this would be the case even if the ultimate aim was to either ensure an equal diachronic share of benefits for each person or a more efficient use of scarce resources. This, then, is the ethical principle that I believe supports the anti-ageist intuition: that there are moral reasons to give equal concern to the fundamental synchronic interests of persons irrespective of their age.

Chapter three examines cultural ageism in greater detail, and it defines it as an oppressive ideology which involves a dynamic between socially constructed groups and cultural stereotypes. I argue that ageist stereotypes exist prior to the assumption that the elderly constitute a social group, and that to effectively challenge cultural ageism we must challenge the accuracy and rationality of these stereotypes about the old. It is in this part of the thesis that the analogy between ageism on the one hand and racism and sexism on the other is analysed in greater detail, and while there are similarities and parallels between cultural ageism and those other forms of cultural oppression there are also significant differences. The chapter examines the actual response of much liberal egalitarian theory to the existence of cultural oppression generally, and I describe Andrew Kernohan's advocacy strategy that I believe anti-

ageists *should* adopt if they are to effectively challenge this category of ageism even within an egalitarian society.⁶ This strategy seeks to persuade people of the fallacy of ageist cultural stereotypes by using the economic, educational and ideological power of the liberal state without resorting to censorship. The advocacy strategy therefore differs from both perfectionism and the traditional *laissez faire* attitude that liberals have to cultural values.

Chapters 4 to 6 examine the egalitarian forms of ageism, and its justification in much contemporary liberal philosophy. As noted, ageism motivated by a concern for efficiency will be extrinsically wrong for the same reasons as that motivated by equality. Chapter 4 starts by outlining the difference between a purely distributive economic egalitarianism and a broader social and political egalitarian ideal. I claim that it is within the former that egalitarian ageism is condoned and that only within the latter can it be effectively challenged. Distributive egalitarianism focuses upon the complete lives of citizens and aims to ensure that each person has an equal diachronic share of benefits over her complete life. This has been called the complete life view (CLV), and it embodies the problem identified by Cupit that ‘the argument form equalising benefits is a poor basis on which to try to account for any intuition that age discrimination is unjust.’⁷ The CLV itself is justified by two fundamental values. It views diachronic equality as the fairest system of economic distribution and it claims to enforce the independent moral principle that individuals should be responsible for the success of their own lives.

⁶ Andrew Kernohan, *Liberalism, Equality and Cultural Oppression* (Cambridge: Cambridge University Press, 1998). Although Kernohan himself does not discuss cultural ageism he does allude to the old as a group that is subject to cultural oppression (see pp50-51), and I expand on this below.

⁷ Cupit, ‘Justice, Age, and Veneration,’ p705.

The social ideal of equality, a recent version of which has been described as democratic egalitarianism (DE), has the fundamental goal of promoting and maintaining relations of social equality between citizens, and it views economic distribution as a secondary or derivative issue.⁸ DE would challenge egalitarian ageism because such discrimination would invariably involve social relations of inequality between citizens even if their diachronic shares of benefits were equal. It is thus within DE that I believe the anti-ageist ethical view can be best represented.

Chapter 5 examines the CLV and its ageist implications in more detail and compares it with various alternative views about possible synchronic distributions of resources or welfare between citizens. It also compares these views with the ‘fair innings argument’ (FIA) that claims that people are only entitled to a certain (and perhaps equal) length of life, and with the concept of the QALY. The chapter argues that both the CLV and the synchronic alternatives have implausible implications, and that the best possible distributive view is a hybrid of the two. Unfortunately, this too suffers from difficulties, though these are with practicality rather than moral plausibility.

Chapter 6 argues that the CLV logically adopts a prudential analogy (PA) to determine the rational way that a finite diachronic share of benefits would be distributed over the course of one life. This thought experiment would then be replicated within society in order to structure the tax and welfare institutions of a just state. The chapter examines how the PA functions within the work of two of the most prominent contemporary liberal thinkers. Part of the force of the PA is that it views

⁸ Elizabeth S. Anderson, ‘What Is the Point of Equality?’ *Ethics* 109 (1999): 287-337; Samuel Scheffler, ‘What is Egalitarianism?’ *Philosophy and Public Affairs* 31 (2003): 5-39.

the different age-groups as different stages within the same life, and consequently the interests the young and old no longer need to be viewed as being in conflict. However, we can only do this by denying the importance of synchronic interests, and therefore, the chapter claims, the PA provides further justification of discrimination against the old in ways that frustrate their fundamental synchronic interests.

Finally, in chapter 7, I return to the social ideal of democratic egalitarianism and the principle of equalising social relations (ESR) that I first described in chapter 4. Within this concluding chapter I show how the hybrid model of economic distribution outlined in chapter 5 might be implemented within that social ideal. By incorporating this model the social ideal can protect both the diachronic and synchronic interests of persons as defined in chapter 2. And, by protecting both forms of interest, DE can both avoid egalitarian ageism as well as embrace the advocacy strategy that challenges the cultural ageism outlined in chapter 3. DE undermines intuitive support for the CLV both by refuting the idea that diachronic equality is the fairest system of economic distribution, and by simultaneously incorporating the principle of individual responsibility. Finally, the chapter returns to the four social contexts discussed in chapter 1 and briefly examines how DE and the principle of ESR would challenge the age discrimination found within those contexts.

What this thesis achieves, therefore, is not only a greater understanding of the nature of ageism and what makes it wrongful, or that the anti-ageist ethical principle is compatible with a broader egalitarian philosophy. The thesis also links the discrimination of the practical ethical problem of how we should treat the old with a wider contemporary debate within egalitarian political philosophy. By showing that

DE can refute or incorporate the justifications of the CLV the theory is shown to be an important and morally plausible alternative to the mainstream distributive egalitarian views.

Chapter One: Ageism as a concern of social justice

The purpose of this chapter is to outline both the defences and challenges to ageism and age discrimination that have developed over recent years, and to do so in a number of social contexts including health care, income distribution, citizenship rights, and employment. The chapter will also note the emergence of anti-ageist legislation and critique the reasons for that emergence. Any discussion of ageism, however, should begin with an analysis of the nature of discrimination per se.

1.1 The concepts of discrimination and ageism: Some preliminary remarks

In his entry for the *Encyclopedia of Applied Ethics*, Harry Lesser notes that the concept of ageism is of 'recent coinage', that it is generally based on the models of 'racism' and 'sexism', and can be defined 'as wrongful or unjustified adverse discrimination on the grounds of age'.⁹ One aim of this thesis is to go beyond that definition and determine what makes discrimination on grounds of age wrongful. Any form of discrimination may be 'adverse' to the interests of the individuals affected, but it is a further question as to whether that discrimination is also 'wrongful'. Discrimination per se has very much become a morally laden term. As Peter Singer notes, 'discrimination' is a term that has the dual function of being both descriptive and evaluative and these terms are often conflated.¹⁰ If a public policy or social practice is described as discriminatory it can automatically bring with it evaluative implications that may not be justified. These evaluative implications mean that to

⁹ Harry Lesser, 'Ageism,' *Encyclopedia of Applied Ethics, Volume 1* (Academic Press, 1998), p87.

¹⁰ Peter Singer, 'Equality: Is Racial Discrimination Arbitrary?' in Jan Narveson (ed.), *Moral Issues* (Toronto, New York: Oxford University Press, 1983): 308-324, p309.

accuse someone or some thing of being discriminatory is often seen as a term of attack, though, at the same time, to call someone an ageist does not have the same resonance as calling someone a racist. As Oliver Leaman notes, 'while many people feel guilty at admitting to racist or sexist attitudes, ageist attitudes do not tend to gain the same opprobrium'.¹¹

We therefore need to be careful with the specification of terms, and we need to distance the term discrimination from its emotive use and to understand it in a dispassionate sense. To discriminate means only to make a distinction between persons on the basis of reasons, and it is these reasons, and the consequences that flow from discrimination based upon them, that determine whether a form of discrimination is morally wrong or morally benign. Even if social institutions and officials discriminate against people of a certain race, gender or age in the allocation of goods and services, the practice simply involves the favouring of one category of person over another. There is nothing integral to the term that makes such discrimination necessarily wrong.

When someone experiences 'adverse' discrimination, then, there are certain interests of that agent that are either neglected or thwarted as a consequence of a discriminatory practice. But again, this definition in itself does not mean that adverse discrimination is wrong, and people in fact suffer legitimate adverse discrimination all the time within the contexts of job recruitment and in the allocation of university places. If I am an unsuccessful candidate for either of these goods, and the selection

¹¹ Oliver Leaman, 'Justifying Ageism,' in A. Harry Lesser (ed.) *Ageing, Autonomy and Resources* (Aldershot: Ashgate, 1999): 180-188, p182.

process has been fair, then I have been legitimately discriminated against on the basis of my merit, qualifications and experience. Although my interests in having the job that I want or the university place of my choice have been adversely affected these forms of adverse discrimination are not wrong. They are not wrongful so long as the discriminatory decision was based upon criteria aimed at determining expected performance within either the job or on the university course. Adverse discrimination that is based partly upon what are often thought to be non-performance criteria, like race and gender, are more problematic. Nevertheless, as many who support various forms of positive discrimination might argue, such discrimination is not always obviously wrong even then.

We are also not helped in our attempt to define the wrongfulness of any discrimination to simply label the trait on which individuals are discriminated against as 'irrelevant'. As Larry Alexander argues, that merely begs the question of what makes it irrelevant: the trait is obviously relevant to those who wish to discriminate on its basis.¹² Moreover, as Geoffrey Cupit points out, '[t]he mere fact that a distribution is made on the basis of an 'irrelevant' consideration does not make that distribution unfair.'¹³ The street number of one's house may seem an irrelevant ground for the distribution of water for gardening, but that does not make it unjust for the council to impose a hosepipe ban on even-numbered houses on alternative days of the week.

It might be suggested that it is wrong to use the mere fact of chronological age as grounds for adverse discrimination because, as with any other form of wrongful

¹² Larry Alexander, 'What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes, and Proxies,' *University of Pennsylvania Review* 141 (1992): pp149-219.

¹³ Geoffrey Cupit, 'Justice, Age, and Veneration,' *Ethics* 108 (1998): 702-718, p704.

discrimination, it arbitrarily defines individuals as members of a social group, in this case the 'elderly', and it therefore does not treat them as individuals. However, this also fails to define the wrongfulness of ageism because if we look at discrimination per se we find that simply categorizing people according to a particular defining feature and discriminating against them on that basis does not necessarily constitute an immoral action. For example, if I were a passenger in a particular train carriage in which a violent crime had taken place, then it is not immoral that I am inconvenienced as a consequence by being held back and interviewed by the authorities seeking the culprit. The defining feature that puts me in to the arbitrary group of 'crime suspects' is the fact that I was in the train carriage at the time.

It might be argued that it is wrong to discriminate on the basis of an immutable trait for which one is not responsible. Old age may be thought of as an immutable trait because, although a person has not always been old, once they are it is a feature they can only escape with death. Naturally, discrimination on the basis of immutable traits is not always adverse, and discrimination on the basis of chronological age is in fact often favourable to older people. A current example of such favourable age discrimination within health care is the provision of free influenza injections to older people who are more likely to become seriously ill and develop pneumonia.¹⁴ However, if it is not wrong to define the old on the basis of their immutable trait in the case that the discrimination is beneficial, then why should it be wrong if the discrimination should be adverse? In any case, some examples of unfavourable discrimination on the basis of an immutable trait do seem acceptable. For example,

¹⁴ A cynic might say that the primary reason the government offers free influenza injections to older people is not simply to prevent unnecessary suffering, but because it is a great deal cheaper to inoculate the elderly against the disease than to pay for the care of numerous old people each year being admitted to acute hospitals with pneumonia. Nevertheless, the elderly directly benefit from the policy.

blindness is an immutable trait but there seems nothing obviously wrong with discriminating against blind people who wish to become bus drivers. Moreover, the categorization of persons on the basis of an immutable trait could not exclusively define the wrongfulness of discrimination because discrimination on the basis of many *mutable* traits is also thought to be wrong. Discrimination on the basis of religious affiliation is an obvious example.

A more subtle approach to determining the wrongness of discrimination generally is to look at the historical and contemporary socio-economic position of the individuals that comprise the social groups discriminated against. Blacks will earn relatively less than whites on the whole, and women earn less than men. However, the social and economic position of victims of discrimination in fact merely represents a symptom of the discrimination, and although the fact that such consequences occur may be part of what is wrong with wrongful discrimination, such an approach does not explain why the discrimination occurs in the first place. Moreover, although there are many very poor older persons in the real world of contemporary society, there are also a large number who are very well off. But the existence of wealthy old people, as with the existence of wealthy blacks, does not at the same time discount the existence of wrongful discrimination.

It would appear, therefore, that we cannot determine that a form of discrimination in general or ageism in particular is wrong simply because it has adverse effects, or that it is arbitrary, or that it is based upon an 'irrelevant' or 'immutable' feature, or that those discriminated against are members of a socio-economic group that has historically fared badly. The primary focus of this thesis is age discrimination, and, as

noted in the Introduction, I am arguing that there is not just one category of ageism but two; cultural ageism and egalitarian ageism. Most anti-ageists have described ageism only in terms of negative cultural assumptions, and, like Steve Scrutton, they merely argue that ageism ‘creates and fosters prejudices about the nature and experience of old age.’¹⁵ Although the attitudes and stereotypes that dominate society are not shared by all they are unquestioned by most. This understanding is undoubtedly true of ‘cultural ageism’, but if ageism involved only negative attitudes then all mainstream liberal political theories would reject any ageist policies that adversely affected older people. This is not the case, however, and the issue is complicated by the fact that many liberal egalitarians either explicitly or implicitly justify some age discrimination. In response to this complexity I argue that there are two elements that determine the wrongfulness of discrimination in general, which are firstly, the nature of the reasons for which we discriminate, and secondly, the degree to which the consequences that flow from that discrimination are harmful to certain fundamental interests that all persons have. In the context of age I define the term ‘ageism’ to constitute only *wrongful* age discrimination, which means that not all discrimination on the basis of age would count as ageism.

1.2 Ageism: The emergence of a concept

Having made some preliminary definitions we should set the scene of the current ageist debate. We have noted that the concept of ageism is very recent. The earliest use of the concept of ageism was by the psychiatrist Robert Butler who saw parallels

¹⁵ Steve Scrutton, ‘Ageism: The Foundations of Age Discrimination,’ in Evelyn McEwen, *The Unrecognised Discrimination*, (London: Age Concern England, 1990), p13.

between the generational conflict between students and police on American campuses in the 1960s with those between the middle aged and the elderly in residential housing projects. Ageism was seen by Butler to have close parallels with racism and sexism, and he defined the former 'as a process of systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this for skin colour and gender'.¹⁶ As we will see below there are several reasons why the parallels between ageism on the one hand and racism and sexism on the other have been challenged, but it is important to note that Butler's coining of the term, and the recognition of the existence of the phenomenon, had its roots in a society seeking to promote wider civil rights for what were perceived as the oppressed members of certain social groups.

'Ageism' was then used as an evaluative term to challenge the dominance of 'disengagement theory' within gerontology and sociology in the 1950s and 1960s,¹⁷ a theory that some believe continues to have strong influence on most people's thinking.¹⁸ The theory was thought to be ageist because it uncritically accepted negative stereotypes of the elderly and even sought to justify them. Disengagement theory explains the condition of old age as a process of role adaptation and suggests that ageing involves gradual and progressive withdrawal by older individuals from social roles and obligations, and a corresponding lowering of the expectations that others have of them. This process of disengagement supposedly takes place on three levels; social, individual, and psychological. On the social level older people are

¹⁶ Robert Butler, 'Ageism: a forward,' *Journal of Social Issues* 36 (1980): 8-11, p9.

¹⁷ See E. Cumming & W. Henry, *Growing Old: The Process of Disengagement* (New York: Basic Books, 1961).

¹⁸ John A. Vincent, *Inequality and Old Age* (London: UCL Press, 1995), p154.

eased out of roles in which they are no longer able to function effectively (perhaps as paid employees), and their place is taken by younger persons in order that society can continue to work efficiently. On the individual level older persons can conserve their diminishing energies by fulfilling fewer and less demanding roles, perhaps as grandparents. And at the psychological level disengagement allows an emotional adjustment for the preparation for death.

The assumptions that underlie disengagement theory, that older people are in an inevitable process of progressive physical and intellectual decline, that the older a person is the less adaptable and capable they are, and the idea that it is beneficial to society that they are marginalised, are all in fact cultural stereotypes. The incorporation of these stereotypes in to a theory designed to explain the condition of the elderly today fails to question whether this degenerative condition is a necessary one for all old people even if it may be for some, and it does not question whether justice might require that people have the opportunity to remain productive and socially included members of society irrespective of age. Some sociologists have more recently criticised much gerontological theory along these lines and have argued that the discipline has tended to explain 'the problems of the aged as consequences of the individual's deterioration and decline',¹⁹ rather than to challenge the assumptions that lie behind those problems.

However, despite the charge that established theory and many social practices are ageist the phenomenon has rarely been seen as a serious social, political and moral

¹⁹ J. Levin & W.C. Levin, *Ageism: Prejudice and Discrimination Against the Elderly* (Belmont, CA: Wadsworth, 1980), pix.

issue. In 1980 Bill Bytheway, one of the few to attempt to develop and clarify the concept, recognised the fact that ageism was generally perceived to be little more than a joke.²⁰ Ten years later the title of a collection of essays on ageism published by Age Concern acknowledged the fact that this form of discrimination continued to be largely ‘unrecognised’.²¹ However, while the idea of anti-ageism was dismissed as a joke by many, the use of chronological age as a basis on which to treat people differently and unfavourably was increasingly justified in several contexts. There have, for example, been an increasing number of health economists, and writers on medical ethics, who have viewed age discrimination that adversely affected the old as an unfortunate but necessary consequence of pursuing a particular conception of fairness: that is fairness between the complete separate lives of persons rather than just between the young and old. There have also been justifications presented for discriminating against the old in the distribution of income, the distribution of electoral rights and in employment, and each of these will be examined in more detail in the next section below.

1.3 Ageism in context

The aim of this section is to examine the various sources of motivation for ageist policies within four social contexts. These contexts will be returned to briefly in chapter 7 to show how the arguments presented in the thesis can be used in practice to support non-ageist or anti-ageist positions within them.

²⁰ Bill Bytheway, ‘Is Ageism just a joke?’ *New Age* 12 (1980): 29-30.

²¹ Evelyn McEwen (ed.), *Age: The Unrecognised Discrimination* (London: Age Concern England, 1990).

(i) Healthcare

There is evidence that the negative cultural judgements regarding older people that are prevalent in society are also shared by some hospital staff, and this manifests as a reluctance to work with the elderly and in the patronising ways in which they often communicate with them.²² Alison Norman argues that within the professional medical field of gerontology '[w]ork with old people is not a prestigious occupation and there is a vicious circle in that jobs with low prestige tend to attract unambitious or less skilled workers, or those who because of racial or social discrimination or competing domestic responsibilities cannot get work elsewhere.'²³ This suggests that because an underlying ageist ideology devalues old age, and older citizens, it also devalues the work of professionals charged with caring for them.

The consequence of this ageist ideology is that, at the very least, older individuals will receive less than equal care from medical and social service professionals and auxiliary staff. The Kings Fund has identified the existence of similar negative attitudes towards the elderly among residential and nursing home staff.²⁴ One investigation in to the Nye Bevan Lodge Residential home in 1988 found that residents had been illegally deprived of their money, made to queue naked for the baths, and suffered regular physical and sexual assault.²⁵

²² S. Lookinland & K. Anson, 'Perpetuation of Ageist Attitudes among Present and Future Healthcare Personnel: Implications for Elder Care,' *Journal of Advanced Nursing* 21 (1995): 47-56.

²³ Alison Norman, *Aspects of Ageism: A Discussion Paper* (London: Centre for Policy in Ageing, 1987), p5.

²⁴ S. Farrell, J. Robinson & P. Fletcher, *A New Era for Community Care? What People want from health, housing and social care services* (London: Kings Fund, 1999).

²⁵ Scrutton, 'Ageism: The Foundations of Age Discrimination', p22.

In such instances individual care staff have acted in a vicious way towards the vulnerable persons in their care and it might be suggested that these care staff were merely sadistic bullies; the fact that the victims were old not necessarily having anything to do with the abuse. Certainly there will always be bullies and sadists to prey upon the vulnerable. However, what the authors of these reports argue is that the abuse is secondary to socially held beliefs that stereotype the older person as meaningless, expendable, and ultimately of less intrinsic moral worth. Indeed, Margot Jeffries argues that 'elder abuse' such as this 'is probably more common than the few cases which receive publicity would indicate'.²⁶ This sort of claim is supported by Mike Brogden who argues that there is in fact a widespread illegal killing of the elderly that goes unchecked (mostly by medical and nursing staff or other carers), and that such 'geronticide ... could not occur without the dominance of an ideology of ageism'.²⁷ Such an ageist ideology is clearly as destructive for older persons as racist ideology can be for members of particular racial and ethnic groups.

Nevertheless, even if cultural ageism within the health service does not lead to humiliation, physical violence, and death, it often leads to discrimination that most people would find unfair. The most obvious forms of direct discrimination involve the arbitrary use of upper age limits to control access to health care services, and a study by Age Concern found that GPs operated such age limits for older patients when

²⁶ Margot Jeffries, 'Aged People: Social Attitudes Towards,' in *Encyclopedia of Applied Ethics, Volume 1* (Academic Press, 1998): p84.

²⁷ Mike Brogden, *Geronticide: Killing the Elderly* (London: Jessica Kingsley Publishers, 2001): p187.

arranging referrals for knee replacements, kidney dialysis, and heart by-pass operations.²⁸

There is, however, a difficulty in determining whether such discrimination in access to services reflects a judgement by the doctors responsible that older persons are either morally or socially inferior, or whether it reflects the quite different idea that we should discriminate against the elderly on the basis of either efficiency or 'fairness'. Dan Brock has noted that on the conventional view, held by physicians and public alike, the allocation of healthcare in conditions of scarcity should be on the basis of need alone. Although both healthcare needs and the expected benefits of treatment will differ between younger and older patients it is nevertheless these differences, and not the differences of chronological age, that should be of relevance in determining their claims to social resources for treatment. Thus, '[i]n the conventional view, differential treatment based on age itself is unjust ageism'.²⁹ And, 'in response to any proposals to limit the availability to the elderly of resources generally, and healthcare in particular, their advocates have added the charge of 'ageism' to the more familiar charges of racism and sexism'.³⁰ Thus, the conventional view involves adhering to the idea that needs alone should dictate allocation of resources, and this conventional view is one for anti-ageists to continue to defend. Nevertheless, for different reasons many contemporary political and moral thinkers reject this conventional view and justify discrimination on the basis of age.

²⁸ Age Concern, *New Survey of GPs Cconfirms Ageism in the NHS* (Age Concern England Press Release, 17 May 2000).

²⁹ Dan Brock, 'Justice, healthcare, and the elderly,' *Philosophy and Public Affairs* 18 (1989): 297-312, p299.

³⁰ *Ibid*, p388.

Many of the defences of age discrimination in health care have been utilitarian. A.B. Shaw has argued that 'utilitarianism is necessary if not sufficient for ethical rationing decisions' in healthcare, and that therefore '[t]he case for ageism is moral.'³¹ It is utilitarian in this context in the sense that utility is accepted as the primary good, and that most utility would be produced as a consequence of age discrimination in this context. Utility might be measured in the number of extra years lived by the younger people favoured with medical treatment than would have been enjoyed by the old had they been treated. The concept of the Quality Adjusted Life-Year (QALY), developed by health economists like Alan Williams, is arguably an example of the utilitarian social choice theory that aims to ensure maximal efficiency in order to, in turn, ensure maximal welfare for society as a whole. QALYs are a way of prioritising patients for treatment by ensuring that scarce healthcare resources are distributed in such a way as to maximise aggregate benefit. As the concept ostensibly involves only the use of medical criteria in deciding which treatments or patients it would be most efficient for society to finance it is supposed to be value neutral. Nevertheless, the economists that use the concept may implicitly look at the elderly as 'nearly dead', whose productive years are behind them, and for this reason the practical use of the QALY would inevitably discriminate against the old. It has therefore been claimed by John Harris that 'the ageism of the QALY is inescapable',³² and even if such ageism is not

³¹ A.B. Shaw, 'In Defence of Ageism,' *Journal of Medical Ethics* 20 (1994): 188-91, p90. It is noteworthy that Shaw defines what he thinks is justifiable age discrimination as 'ageism', while my own definition of ageism constitutes only unjustifiable age discrimination. Nevertheless, I would agree with Shaw that his defence of age discrimination is ageist, the difference being that I believe it to be unjust.

³² John Harris, 'More and Better Justice,' in Bell & Mendus, *Philosophy and Medical Welfare* (Cambridge: Cambridge University Press, 1988): 75-96; p 79.

motivated by age bias it may nevertheless reinforce it. I discuss the concept of QALYs, its relation to utilitarianism and its ageist implications in chapter 5.

However, defences of age-differentiated treatment in healthcare are not confined to utilitarians and a moral case for ageism may also be made on reasons of fairness. It is often thought that in circumstances of scarce resources, where rationing is necessary, that those resources should be used for the benefit of the young rather than the old who can be said to already have had a 'fair innings' of life. The classic explication of the FIA is that of John Harris, though he does not himself support it, and he suggests a number of responses to it that I will analyse in more depth in chapter 5.³³ Briefly, however, what the FIA tries to do 'is capture and express in a workable form the truth that while it is always a *misfortune* to die when one wants to go on living, it is not a tragedy to die in old age; but it is ... both a tragedy and a misfortune to be cut off prematurely'.³⁴ A reasonable form of the FIA, therefore, would hold 'that people who had achieved old age or who were closely approaching it would not have their lives prolonged when this could only be achieved at the cost of the lives of those who were not nearing old age'.³⁵ Consequently, the basis of the FIA 'points to the fact that the injustice done to someone who has not had a bad innings when they lose out to someone who has is significantly greater than in the reverse circumstances'.³⁶

³³ John Harris, *The Value of Life: An Introduction to Medical Ethics* (London: Routledge, 1985), chapter 5.

³⁴ *Ibid.*, p93.

³⁵ *Ibid.*, p94.

³⁶ *Ibid.*

The FIA is a philosophical argument that has obvious advantages for those who must make rationing decisions in the distribution of health services and other cases of intergenerational justice involving the distribution of benefits between the generations, and it is unsurprisingly one that is often used.³⁷ Moreover, as in the case of QALYs, it is difficult to assess the degree to which those who defend age discrimination on the basis of moral reasons like fairness may in fact be motivated primarily by cultural ageist prejudice. To have a moral reason for doing something that one would like to do for immoral reasons is of obvious benefit to those who are prejudiced. However, in the course of this thesis I will examine the moral reasons for age discrimination and challenge them solely on their own terms rather than because they may mask cultural ageism.

(ii) Income support

There are several sources of ageism active within the context of income distribution, and together they have generated a fierce debate in the last two decades over what has become known as ‘generational equity’. The origins of this debate partly derive from what Bill Bytheway has called a ‘moral panic’, which has developed from recent demographic forecasts about an unsustainable growth in the numbers of the elderly and a corresponding decline in the number of young adults of working age.³⁸ The projections by the Office of Population and Surveys (OPCS) on population trends

³⁷ Alan Williams, ‘Intergenerational equity: an exploration of the ‘fair innings,’ argument’ *Health Economics* 6 (1997): 117-32.

³⁸ Bill Bytheway, *Ageism* (Buckingham, Philadelphia: Open University Press, 1995), pp52-4. The nature of this panic is not moral in the sense that morality itself is endangered by the activities of older citizens. Rather, it is a moral *panic* in the sense that taking care of older citizens is a moral issue and current demographic trends are arguably creating a crisis for the moral question of what level of a society’s resources should be redistributed to the old.

estimate that between 1991 and 2031 the number of people between 65 and 75 will rise by nearly 52%, while the numbers of those over 75 will increase by 70%.³⁹ These changes will supposedly lead to an increase of the dependency ratio with ever fewer young people having to support ever more old people. What this allegedly means is that younger people will have to forego more of their income and provide more resources to the growing number of idle old people.

This view has been allied to a second widely held belief that the old are in fact currently consuming more than their fair share of society's resources to the detriment of the young, and especially of children. The generational equity debate has been fuelled by organisations like Americans for Generational Equity (AGE) that claim that the elderly benefit disproportionately from current public spending programs while the young are deprived.

At the same time that this equity debate has developed there has also been something of a change in the popular perception of the elderly, and while in the 1960s and early 1970s elderly people were generally stereotyped as poor and deserving, by the 1980s they were more likely to be portrayed as a powerful and financially secure social group using that power to further their selfish interests at the expense of others.⁴⁰ Both popular perceptions are of course stereotypes, and they are equally mistaken because they both assume that all elderly people have the same characteristics. Nevertheless, it is interesting to note that while they were stereotyped as part of the deserving poor they benefited from benevolent and universal policies to assist them, but during the

³⁹ Office of Population Census and Surveys, *Population Trends* 72 (London: HMSO, 1993).

⁴⁰ H. Farlie, 'Greedy Geezers: Talkin 'Bout My Generation,' *New Republic* 28 March 1988, p19.

1980s, when the forecasts of a demographic time-bomb became prevalent, Britain and other 'Western' countries underwent far-reaching retrenching of their welfare states. Integral to a debate on generational equity, therefore, is the issue of how cultural images and stereotypes are used by political leaders to further their desired policies. But a number of important points can be identified here, and the basic premises of the intergenerational equity debate questioned.

Firstly, we can question the validity of the forecasts of a demographic time bomb and the fears that go with it of huge numbers of economically dependent, and even question the assumption that an ageing population is actually a social problem at all. Population ageing has in fact been going on for generations and we are not now in a new demographic situation. The average age of the population in Britain started to increase in the first decade of the Twentieth century and peaked in the 1930s.⁴¹ Moreover, it was at the time when Britain's population was ageing most rapidly that the pension system was established and expanded, and when it had its widest popular support. Margot Jeffreys argues that 'the moral panic of the 'burden of the aged' actually reflects 'a deep seated ambivalence towards older people, which can lead to an exaggeration of the size and nature of the resources required to meet their needs or of the sacrifice required of younger people'.⁴² Other commentators have argued that the demographic time bomb is imaginary and that, if society removes mandatory retirement requirements and encourages active people to work until later in their lives,

⁴¹ F. Laczko & C. Phillipson, *Changing Work and Retirement* (Buckingham: Open University Press, 1991), p107.

⁴² Margot Jeffries, *Growing Old in the Twentieth Century* (London: Routledge, 1989), pxiii.

the economic growth that would result would be more than sufficient to provide support for the ageing population.⁴³

Finally, as John Vincent points out, the issue of population ageing is rarely considered in the context of other population issues such as immigration. Vincent insists that the demographic time-bomb thesis is built upon the assumption that the citizens of a society are only those who are born in to it, and excludes the possibility of immigration to ease the dependency ratios. There are a large number of young people from developing countries that are desperate for the opportunity to work in industrialised economies, and yet ever more elaborate procedures are being implemented to stem the tide of people seeking new opportunities in the very countries that are identified as having a 'problem' of ageing.⁴⁴

We can also question the extent to which the elderly are indeed a relatively affluent age group and whether Paul Johnson is right in characterizing public policy as an 'increasingly bitter competition for resources between workers and pensioners'.⁴⁵ As noted, in recent years the accepted stereotypes concerning the old have focussed less on their being a part of the deserving poor and more on them being parasitic to the well-being of society generally and to the young in particular. This change has corresponded with a change in the political culture from social democratic to the new

⁴³ Phil Mullan, *The Imaginary Time Bomb* (London: Palgrave Macmillan, 2002). This argument has been strenuously challenged by other writers, because economic growth rates alter the absolute level of both wages and pensions but not the relative value between the two.

⁴⁴ John A. Vincent, *Inequality and Old Age*, p38-39.

⁴⁵ Paul Johnson, 'Introduction,' in P. Johnson, C. Conrad, & D. Thomson (eds.) *Workers versus Pensioners: Intergenerational Justice in an ageing world* (Manchester: Manchester University Press, 1989), p2. One interesting point that I do not consider here is the tendency of older people in Western societies to be white, while the incidence of poverty among children is disproportionately among racial minorities.

right, and from state controlled public policies to a reliance on the market. As a result some commentators like Alan Walker perceive the moral panic concerning an increasingly large and dependent older population as having been largely invented by governments seeking to retrench public spending.⁴⁶ He argues that the 'political concern about the cost of ageing has been amplified artificially in order to legitimate policies aimed at diminishing the state's role in financial and social support for older people'.⁴⁷ Moreover, governments 'have used the concept of intergenerational equity to legitimate those actions; the result will be to widen the division between market based affluence and publicly administrated poverty in old age.'⁴⁸

In an early critique of the generational equity debate R. H. Binstock argued that the claims of those who saw the old as socially parasitic was built upon three basic components: the demographic changes in Western society resulting in an increase in their numbers, the economic well-being of the elderly relative to other age groups, and the political behaviour of the elderly in supporting their self-interest as an age group.⁴⁹ Binstock argues that each of these components can be refuted. I have already briefly shown how the first has been contested by academics, and I will deal with the political behaviour of the elderly in the next subsection. However, the rest of this subsection will examine the economic well-being of the elderly relative to younger age groups.

⁴⁶ Alan Walker, 'The Economic 'Burden' of Ageing and the Prospect of Intergenerational Conflict,' *Ageing and Society* 10 (1990): 377-396.

⁴⁷ Ibid, p378.

⁴⁸ Ibid, p393-3.

⁴⁹ R.H. Binstock, 'The Aged as Scapegoat,' *The Gerontologist* 23: 136-143.

The assumption that the old are taking more of their fair share of available resources cannot be easily assessed from simply comparing the number of children in poverty with the number of elderly.⁵⁰ The relatively higher and increasing levels of poverty among children are related to other social trends like the fact that more children are now being brought up by single mothers (exacerbated by the fact that divorce rates are increasing, and that more children are born outside stable relationships), and single women have a decreased earning capability due to their own societal discrimination and lack of affordable child care. Therefore, Binstock argues that 'the elderly have become scapegoats for the economic deprivation of children with the result of increasingly hostile attitudes towards the old.'⁵¹ However, what the views of Binstock and Walker suggest is that negative cultural stereotypes are used by political leaders in order to support public policy changes that they favour.

But cultural ageism and cultural stereotypes are not the only source of justification for political agendas designed to reduce public spending. The debate over generational equity would also suggest that age discrimination may be justified on the moral grounds of 'fairness'. If the old are thought to be enjoying more than their fair share of the available benefits of society then it may be just to restrict their access to them, especially if it is to the detriment of the young. Again, as with the FIA in health care, these moral arguments about fairness may also be used as a way of masking intrinsically ageist judgements about the old. Indeed, advocates of egalitarian ageism may themselves be influenced more by cultural ageism than a desire to ensure fairness.

⁵⁰ In 1990 the percentage of children (under 18 years) living under the poverty line in the US was 20.6%, while the number of elderly (65 years and older) was 12.2% (U.S. Bureau of the Census).

⁵¹ Binstock, 'The Aged as Scapegoat,' p139.

As we shall see in chapter four, many thinkers either implicitly or explicitly assume what has been called the complete life view (CLV), which extends the ageist implications of the FIA outlined in the last subsection to the distribution of income.⁵² If we accept that an egalitarian distribution of benefits should be equal between the complete separate lives of persons, then any less well off part of one's life may be legitimately compensated for, either before or afterwards, by another period of affluence. In contrast to the FIA, the CLV is relevant to material goods rather than the length of one's life, so it does not by itself justify discrimination against the old any more than it does the young. Only if it can be shown that the old have already had their approximate fair share of life-time benefits does it justify age discrimination against the old.

However, there has been a large number of writers involved in the generational equity debate who have sought to identify the present old age-group as privileged, not just relative to previous generations of the old, or even just relative to many younger people today, but that they are privileged relative to how well off the next generation of old will be in a couple of decades time. Even if the young of today are not as poorly off as today's old were when they were young it is possible that the CLV may justify age discrimination against the latter because the old of tomorrow will be worse off than the old of today. I will save further discussion of the CLV until chapter 4 in the thesis, suffice to say that an obvious implication of the CLV is that the old can, and even perhaps ought, to be allowed to suffer destitution if they have in the past

⁵² For discussions of the CLV see Larry Temkin, *Inequality* (New York & Oxford: Oxford University Press, 1993), ch 8; Dennis Mckerlie, 'Equality and Time,' *Ethics* 99 (1989): 492-502; Mckerlie, 'Equality Between Age-Groups,' *Philosophy and Public Affairs* 21 (1992): 275-95.

enjoyed significantly greater wealth than the young do today, or if they currently enjoy greater wealth than the old will tomorrow.

(iii) Voting rights

This subsection examines the justifications that have been presented by some commentators and political philosophers for the introduction of age-differentiated political rights, the aim of which is to reduce the electoral power of the elderly.⁵³ The source of justification lies in the underlying fear that, because demographic trends are steadily increasing the median age of the voter, and because older voters tend to be more active, older voters will use their electoral strength to further their own short-term self-interest at the expense of younger citizens. They may vote for increases in public expenditure to benefit themselves, and will leave the long-term consequences of their selfishness to younger age groups to pay after they are dead. Such fears seem to be given credence by the figures of politically active elderly. As Matthew Price points out, the American Association of Retired Persons (AARP) is the second largest organization in the United States after the Catholic Church, with over 33 million members; one in four of registered voters is a member of it.⁵⁴ This then represents part of the wider concern about generational equity examined in the last subsection, and the worry is that in a democracy where political parties and leaders are hungry for power, policies that favour the elderly will be pursued in order to secure the support of that large electoral lobby.

⁵³ Phillippe Van Parijs, 'The Disenfranchisement of the Elderly, and Other Attempts to secure Intergenerational Justice,' *Philosophy and Public Affairs* 27 (1999): pp292-333. Douglas J. Stewart, 'Disenfranchise the Old,' *New Republic* 29 (1970): 20-22.

⁵⁴ Matthew C. Price, *Justice Between Generations: The Growing Political Power of the Elderly in America* (New York: Praeger, 1997) 88-9.

Phillippe Van Parijs gives expression to these fears, though he does not attempt to assess the extent to which they are justified, and he examines instead a wide range of possible institutional methods to limit the electoral power of the elderly.⁵⁵ Van Parijs adopts what he calls a ‘Rawls-Machiavelli’ strategy, which combines a Rawlsian component that claims we can determine a publicly defensible vision of social justice, and a Machiavellian component that shapes institutions in such a way that those acting within society will end up generating the necessary conditions of that social justice. He claims that although we can know what social justice requires, the electoral power of one particular age group, the ‘elderly’, who vote mainly out of self-interest, means that our current democratic arrangements will not deliver the conditions for that vision.

Van Parijs discusses a number of possible institutional changes that would reduce the age of the median voter and balance the electoral power between different age categories. We might simply disenfranchise older citizens at perhaps 70 years of age, or reduce the voting age to 16 or even 14. Other possibilities include: plural voting, by which we might give more weight to the votes of younger voters, or increase the number of votes that they have; asymmetrical compulsory voting, which is to say either young people are legally required to vote while the old are exempt, or a poll tax may be introduced to discourage the older voters from exercising their rights, or else we could require each age-group to elect its own representatives in separate constituencies. Alternatively, parents might be given a proxy vote for each child they have, or society might appoint ‘guardians’ to represent the interests of younger and

⁵⁵ Van Parijs, ‘The Disenfranchisement of the Elderly.’

unborn generations in the legislative assembly and thereby challenge any policy proposals that significantly harm the interests of youth.

There seems to be a *prima facie* case for thinking these fears are legitimate because it is in the nature of democracy that the more people with the same interest the more politically powerful that group will become. Each vote counts equally so the majority interests are the ones that prevail. However, that power is crucially dependent upon the members of the group actually identifying with one another and voting for the interest of the group. I think we can show that in the case of the elderly that these are wrongly assumed. In fact, I would say that the arguments that justify the withholding of the franchise from the old are themselves based upon two falsifiable stereotypes. Firstly, the assumption that the elderly as an age-group is comparatively more homogenous than other age groups, and secondly, the assumption that the old are more selfish and short term in the political decisions they make.

We have access to empirical evidence concerning the extent of older people's power as a political pressure group in the work of Exeter University's Older People and Politics Project (OPPOL), which conducted a study of how older people voted in the 1997 General Election.⁵⁶ OPPOL investigated three main concerns within the study: firstly, to determine how effective pressure groups are for older people; secondly, how the power of and influence of older people is perceived by themselves and the general public; and thirdly, the extent to which politicians have responded to the supposed increased power of older people.

⁵⁶ The study is reported and analysed in John A. Vincent, Guy Patterson & Karen Wale, *Politics and Old Age: Older Citizens and Political Processes in Britain* (Aldershot: Ashgate, 2001).

With reference to the supposed homogeneity of the elderly OPPOL identified three key obstacles that inhibit the old from acting as a coherent political force. Firstly, of course, their interests are in fact quite diverse, as diverse in fact as any other age group. If we think of the single issue of the state pension, which would seem to be one central concern around which all elderly could unite, we find that even in this most central issue self-interests actually differ widely. There is extensive diversity in the levels and sources of older people's incomes, and the impact of the state pension on many of their household budgets would not be a strong motivation in the sense of self-interest. Nevertheless, the pension is a potent symbol of the society's recognition of a life-time contribution, and it is actually thought of by many pensioners as a universal right of citizenship rather than a benefit for the old per se. Indeed, many within the pensioner movement have sought to prevent it from becoming exclusively organized by and for older people, and prominent members like the late Barbara Castle and Bruce Kent (among others) have expressed concerns that the movement should not only be about senior citizens but about the rights of all citizens and of citizenship itself.

Thus, far from being purely interested in pursuing sectarian self-interests, as the old are often stereotyped, older people often seek to strengthen the ties between themselves and younger citizens by pointing out that such universal rights as a state pension is in everyone's interests, and is a fundamental aspect of what it means to be a citizen. Moreover, Vincent et al found that older people themselves 'usually justified their political actions in terms of an ideology of the greater good',⁵⁷ and far

⁵⁷ Ibid, p154.

from being inherently selfish they were often found to vote on issues with the interests of their children and grandchildren in mind. Indeed, one important way in which older people find meaning in their lives after their careers and long-term life plans are near completion is within concerns that transcend the individual ego and embrace the health of the community as a whole.⁵⁸ Such transcending concerns will differ from those of the young and middle aged whose concerns will tend to be more immediate and material in nature. It is these age groups, after all, who are involved with developing careers and bringing up children. If the ideal of an inclusive citizenship was strengthened then the political voting power of the elderly might be something to be welcomed rather than feared.

However, in addition to the diversity of the membership there are several other obstacles that mitigate against the old age group from being able to mobilize as a coherent and formidable political force. Firstly, there are the negative cultural issues that concern the old, and what was found to be particularly important by OPPOL's research was the negative cultural evaluations of old age itself. Because the dominant culture of the 'West' devalues age it is difficult to create a positive identity for old age as a symbol that older people wish to internalize, and to which they want to commit themselves. This, in turn, means that '[t]here is a reluctance amongst older people to define themselves as old, and it is possible that this prevents them from identifying with the age-group issues.'⁵⁹ The cultural devaluation of old age also makes it more difficult for old people to organize, because access to the media, which is necessary to

⁵⁸ See for example Robert C. Peck, 'Psychological Developments in the Second Half of Life,' in B. Neugarten (ed.), *Middle Age and Aging* (Chicago, Il: Chicago University Press, 1965): 88-92.

⁵⁹ Vincent et al, *Politics and Old Age*, p151.

convey their message, is restricted and distorted by the negative images that abound in our society, which means the media does not take them seriously.

Secondly, while there may be some truth to the claim that political parties and political leaders might aim to further the interests of the old in order to get their votes in the short-term, political parties are at least as interested in attracting younger voters who will have the franchise for four or five decades to come. Thirdly, as political campaign managers admitted during interviews with OPPOL, the older a person is the less likely she is to be a 'swing' voter, and evidence from the British Election Survey (BES) shows that people over 60 years are less likely to change their vote mid-campaign than younger people.⁶⁰ For this reason political parties will not target the old to the same extent and will consequently not show as much interest in their views.

Finally, as Vincent et al point out, an examination of the major political studies of the 1997 General Election reveals that the issue of an ageing electorate and its interests is totally absent from their discussions. For example, while the studies of Dunleavy et al⁶¹ and Evans & Norris⁶² provide exhaustive analysis about the influence of the numerous sectional interests in the country in the lead up to the election, none of them mention the old in any detail. The obvious point being that if leading academics are unable to identify an increasing level of political power being wielded by an organized lobby of older voters then it probably does not exist.

⁶⁰ Ibid, p75.

⁶¹ P. Dunleavy, A. Gamble, I. Holliday, & G. Peele (eds.), *Developments in British Politics* (Basingstoke: Macmillan, 1997).

⁶² G. Evans & P Norris (eds.), *Critical Elections* (London: Sage Publishers, 1999).

(iv) Employment

The context in which the ageist debate has been perhaps most prominent is within the field of employment, and it has been within this field that there has been much recent anti-ageist legislation. There are two reasons for this recent emergence of anti-ageist legislation in employment, one of which is concerned with efficiency and the other with ethics. The efficiency reason for anti-ageist legislation derives from a growing awareness amongst governments and industry of the macro-economic issue of an ageing workforce.⁶³ If the economies of Western nations are to remain efficient in the face of current demographic trends governments need to overcome entrenched ageist ideas and encourage older workers back to work, and to prevent the ageist employment practices which undoubtedly take place.

The idea that ageism is bad for business is the central message of the Employers Forum on Age that was set up in May 1996 to combat age discrimination in employment. This efficiency reason for anti-ageist policy is known as the 'business case for age diversity', and in the preface to the voluntary Code on Age Diversity in Employment (1999) the government minister Patricia Hodge recognised that 'to base employment decisions on pre-conceived ideas about age rather than on skills and abilities is to waste the talents of a large part of the population'.⁶⁴ But what is being judged wrong here is not the fact that employers have acted on ageist principles, but

⁶³ One third of the British workforce is now over forty years of age. See Colin Duncan, 'Ageism, early exit, and the rationality of age-based discrimination,' in *Ageism in Work and Employment* (Aldershot: Ashgate, 2001).

⁶⁴ Code on *Age Diversity in Employment* (1999), quoted in Bob Hepple, 'Age Discrimination in Employment: Implementing the Framework Directive 2000/78/EC,' in Sandra Fredman & Sarah Spencer (eds.), *Age as an Equality Issue* (Oxford and Portland, Oregon: Hart Publishing, 2003): 71-96, p73.

that by doing so they waste a valuable resource. Thus, the UK government (along with a number of other advanced industrial states) has come to realise that the demand for skills in the labour market outstrips supply, and this, combined with the direct cost to the exchequer of paying various benefits to people under the age of retirement, means that both indirect and direct discrimination may be detrimental to macro-economic growth.⁶⁵ Government initiatives are therefore thought necessary to counteract this collective action problem presented by private individuals and firms. Consequently, the government's employment policy objectives towards older workers seem to converge with the objectives of Age Concern and the general anti-ageist lobby, but, as we shall see, this convergence is only contingent.

This, then, is the efficiency case for anti-ageism in employment. It may also be described in utilitarian terms in the sense that the greater wealth created by a more efficient economy will, in turn, produce a greater sum of utility among members of the population. We therefore have a utilitarian reason to support legislation that *challenges* ageism in the field of employment to match the utilitarian argument that Shaw presents which *defends* ageist policies in healthcare. In 1997 this efficiency/utilitarian justification of anti-ageism in the work environment prompted the English Law Society to recommend that legislation should be introduced as 'a matter of urgency'.⁶⁶ However, the efficiency reason for anti-ageism is only concerned with the consequences of discrimination for business, and this suggests that

⁶⁵ Direct discrimination might involve not employing a candidate or training an employee on the basis of her age alone. Non-direct discrimination might involve the same practice but on the basis that the individual is perceived to be less adaptable as a proxy trait of their being older.

⁶⁶ Law Society, 'Age Discrimination and Employment Law Report,' (Law Society, 1997).

the wrongness of age discrimination in employment is only contingently wrong. This of course has nothing to do with morality or the particular harms done to the disfavoured individuals. Indeed, if it were rational to so discriminate then logical consistency would mean that it would no longer be wrong, and the concern for efficiency would instead defend ageism in employment as well as in healthcare. Moreover, if it could be shown that productivity would be higher within an ageist employment sector, and the additional wealth increased the utility of a majority within the economy, then this would further strengthen the utilitarian defence of ageism in employment. There are those who argue that, as older workers usually earn more than a comparable younger worker, and as they will *tend* to be less easy to move around or sack as the interests of the company change, it is therefore individually rational for firms to indirectly discriminate against older workers because they represent higher transaction costs.⁶⁷

However, there is a second, less cynical, reason for the rise in interest in an anti-ageist legal framework in employment. The ethical argument for anti-ageism views it as morally right for older citizens to have as much access to employment as younger citizens. Bernard Boxill argues that 'the interests of the aged in finding rewarding employment are routinely treated as being intrinsically less important than the similar interests of younger people, and for this reason they are often denied rewarding employment, even when they are the best qualified.'⁶⁸ Boxill argues that age-

⁶⁷ Colin Duncan, 'Ageism, early exit, and the rationality of age-based discrimination.'

⁶⁸ Bernard R. Bloxill, 'Equality, discrimination and preferential treatment,' in Peter Singer (ed.) *A Companion to Ethics* (Oxford: Blackwell Publishers, 1993): 333-342, p335.

discrimination in employment practices violates the moral principle of showing equal concern for the interests of older persons.⁶⁹

Boxill's claim is important because it captures the first part of two distinctions that are fundamental to this thesis. Firstly, he captures part of the idea behind cultural ageism (in the sense that the interests of the old are seen to be intrinsically less important), but it does not acknowledge that there might be an egalitarian argument for age discrimination. It would, in fact, be quite possible to construct an egalitarian argument for age discrimination in employment along the same lines as with other social contexts. According to the CLV it might be suggested that older persons have had their fair or equal share of employment opportunities and that it is now time for them to make way for younger persons. This egalitarian argument for age discrimination is separate from the cultural one, identified by Boxill, which views the interests of the old as intrinsically less important.

Secondly, Boxill's claim recognises the importance of the synchronic interests of the aged that can be harmed by age discrimination, but it is silent on the possibility that persons might have diachronic interests that would benefit from age discrimination. It might be argued that it is in the diachronic interests of persons that ageist employment policies prevail if that discrimination meant that each person had an equal or fair share of those opportunities over their complete lives.

I believe that the emergence of an ethical concern for an anti-ageist legal framework partly reflects a growing appreciation of the synchronic interests of older workers, as

⁶⁹ Ibid.

opposed to their diachronic interests, and their moral right to the protection of their dignity and self-respect. As Sandra Fredman notes, increased poverty, ill health and depression, as well as low self-esteem and social isolation are themselves strong justifications for legal interventions against age discrimination.⁷⁰ This ethical justification, which of course is not contingent upon questions of demographic trends or macro-economic efficiency, is reflected in the European Charter of Fundamental Rights. This Charter proclaims the right of all elderly persons 'to lead a life of dignity and independence and to participate in social and cultural life'.⁷¹

The ethical argument emphasises the view that, within a liberal society, the law ought to embody the community's sense of fairness. Moreover, the law may have a powerful symbolic function and, as Lawrence Friedman suggests, 'the law often gives both culture and behaviour a good swift shove in a certain direction.'⁷² It is possible over time for laws to change the negative cultural biases and inaccurate, irrational stereotypes that some people hold and which can be quite resilient to individual personal reflection. The law has already done this to some degree for racial minorities, women and the physically handicapped, and there is no question that there is less racial and sexual discrimination now than there was before the advent of legislation that outlawed such practices.⁷³ Therefore, as the Director of the Carnegie Third Age Programme pointed out in 1995, there would be a "danger that if age is left

⁷⁰ Sandra Fredman, *Discrimination Law* (Oxford: Oxford University Press, 2002), p62.

⁷¹ European Charter of Fundamental Rights 1950, (Art 25).

⁷² Lawrence M. Friedman, 'Age Discrimination Law: Some Remarks on the American Experience,' in *Age as an Equality Issue* (eds.) Fredman & Spencer, p189.

⁷³ Sex Discrimination Act (1975); Race Relations Act (1976); Disability Discrimination Act (1995).

as the only major cause of discrimination not regulated by law, people will think that it doesn't matter".⁷⁴

1.4 The emergence of anti-ageist legislation

The first country to introduce anti-ageist legislation was the United States, which did so only three years after the 1964 Civil Rights laws were enacted. The 1967 Age Discrimination in Employment Act (ADEA) is confined to age discrimination in employment while the civil rights laws against racism and sexism also cover public accommodations, housing and education as well. Cases of age discrimination are dealt with by the Equal Employment Opportunities Commission (EEOC) as are cases of all other forms of discrimination in employment including racism and sexism. To give an impression of the extent of the problem of ageism in employment, out of the 80 840 cases that were filed with the EEOC between 2000 to 2001 some 21.5% were related to discrimination on the basis of age, while 35.8% were on the basis of race and 31.1% on gender.⁷⁵ It should be noted, however, that the ADEA has been heavily criticised and it has been claimed that it cannot be defended on the grounds that it protects a disfavoured and relatively powerless minority group. The reason for this, as George Rutherglen has shown, is that an examination of the empirical data reveals that claims under the ADEA are predominantly brought by white males who hold relatively high-status and high-paying jobs.⁷⁶

⁷⁴ Richard Worsley, 'Carnegie Third Age Programme,' *Equal Opportunities Review* 60, (1993).

⁷⁵ Public Employment Law Report, May 2002.

⁷⁶ George Rutherglen, 'From Race to Age: The Expanding Scope of Employment Discrimination Law,' *Journal of Legal Studies*, 24 (1995): 491-521.

There have been similar anti-ageist legal developments in many European and other Western countries with Australia's Workplace Relations Act 1996; New Zealand's Human Rights Commission Amendment Act (HRCA) of 1992; Finland's Contract of Employment Act 2001; and the Northern Ireland Act 1998. While most of these national laws make the dismissal of an employee on the basis of age unlawful, they often permit age discrimination for 'acceptable' reasons, and this leaves the implementation of the law vague and ambiguous. The Northern Ireland Act goes further than the others in that it actually gives public authorities a positive duty to promote equality of opportunity on the grounds of age, rather than simply the negative duty to not discriminate against them.⁷⁷

However, while most of the national political and legal responses to age discrimination have been driven by the utilitarian case for efficiency rather than for ethical reasons, there is one exception to this trend. The Republic of Ireland has recently introduced new comprehensive age equality legislation which extends coverage beyond the employment sector to the distribution of goods and services, and there is a single equality commission (the Equality Authority) that has overlapping responsibilities for the multiple listed illegitimate grounds for discrimination. This 'single equality' legislation lists eight illegitimate grounds of discrimination (including age) each of which is equally covered. There are two acts that apply to the single equality legislation, the Employment Equality Act (EEA) of 1998, which prohibits discrimination in the employment context, and the Equal Status Act (ESA) 2000 which prohibits discrimination in the provision of such goods and services as

⁷⁷ For a discussion on the comparative approaches to structuring legislation against age discrimination see Colm O'Conneide, 'Comparative European Perspectives on Age Discrimination Legislation,' in Fredman & Spencer, *Age as an Equality Issue*.

housing, education and admission to private clubs. This equality legislation therefore represents a combination of both efficiency and ethical reasons for anti-ageist legislation.

On top of these national responses to age discrimination, there has now been a recent EU Council Directive that requires all European Union member states to introduce legislation outlawing age-discrimination in employment by 2006.⁷⁸ In order to comply with this requirement each state must introduce legislation outlawing direct and indirect discrimination in employment, including recruitment, promotion, terms and conditions of employment, pay and dismissal, and compulsory retirement must be prohibited unless it is 'objectively justified'.⁷⁹ However, this initiative is again confined to age discrimination in the workplace, and the primary aim of the Directive is to improve business efficiency. The Directive only views age stereotyping and prejudice as wrong to the extent that it is inefficient for business rather than any unfairness it may cause the individual.

A consequence of the contingency of this anti-ageist legislation being based on inefficiency is reflected by the biggest practical challenge it faces, which is to say the kinds of justification that are considered acceptable in order for states and employers to ignore the law. Just as the national laws allow exceptions that are vague so too does the Directive, which permits member states to treat people differently on grounds of

⁷⁸ Council Directive 2000/78/EC Establishing A General Framework for Equal Treatment in Employment and Occupation. The Directives provisions in respect of discrimination on grounds of religion and sexual orientation are to be implemented by December 2003, and by 2006 for Disability and Age.

⁷⁹ 'Objective justification' would be where because of the nature of a job it is thought reasonable and rational to require a compulsory retirement age, i.e. that airline pilots should retire at 55 years.'

age if such policies are 'objectively and reasonably justified by a legitimate aim, including legitimate employment policy.'⁸⁰ This phraseology is of course quite ambiguous, and at least one eminent lawyer has confessed that he has 'no idea [what] legitimate employment policy is supposed to mean.'⁸¹ The conditions of legitimacy are not explicitly expressed, and what constitutes 'reasonable justification' must surely be subjective.

However, it has been argued that even if the aim were only to achieve equality in employment it could not be achieved without legislating on a far wider range of social contexts, and the reason for this is that many aspects of age discrimination interact and reinforce one another. This means that in practice both the ethical and efficiency approaches imply broadly the same wide coverage. If older people enjoyed better healthcare then their employability would be enhanced, and while people are in constructive employment their health is often better than if they were idle and bored at home. Better social housing and access to public transport for older people would make it easier for them to participate actively in society whether in paid employment or the volunteer sector, and better education and training facilities would enhance re-employment. In addition, Sandra Fredman believes that in order to facilitate effective change there must also be promotional and educational measures to help dispel the image of older people as dependent or inferior.⁸² Therefore, legislation focussing on employment will be ineffective unless it is also able to address these wider issues, and Fredman proposes a 'proactive' approach that would facilitate a systematic and

⁸⁰ Quoted in Friedman, 'Age Discrimination Law: Some Remarks on the American Experience,' p177.

⁸¹ Ibid. One possible justification might be positive discrimination which will be looked at in chapter 2.

⁸² Sandra Fredman, 'The Age of Equality,' in Fredman & Spencer (eds.), *Age as an Equality Issue*.

strategic approach in which employers, the state, and other bodies participate actively in resolving the problem of ageism.⁸³

1.5 The challenge for anti-ageists

Throughout this chapter we have reviewed some of the arguments for and against ageist policies, particularly within the contexts of health care provision, income support, voting rights, and employment practices. What we have found is that there are three broad sources of justification for age discrimination and it is often difficult to determine whether certain discriminatory policies are motivated by negative cultural stereotypes, by a concern for efficiency, or normative moral reasons of equality and fairness. Indeed, most of these policies could be driven by at least two of these sources.

Within healthcare provisions we have seen that negative cultural stereotypes concerning the moral value of older persons is often assumed to mitigate against the seriousness of violence and physical harm perpetrated against the old, and that it can even justify this activity in the minds of the perpetrators. Negative cultural stereotypes about older people being obsolete also underlie much of the use of chronological age as a means to control access of persons to healthcare options. Moreover, the negative value inherent in these stereotypes is even projected on to those who work with older people, devaluing the worth of their work as well. We have seen that unexamined, and thus contestable, negative cultural stereotypes, which portray the old as taking more than their fair share of public resources, and imply that older voters are inherently

⁸³ Ibid, p23.

selfish and short term in their thinking, have been presented by both academics and political leaders as reasons to restrict income distribution to the old and even to strip them of their right to vote. On closer examination these stereotypes are found to be fallacious, but, as Walker has noted, such stereotypes present a ready tool for political leaders to manipulate the thinking of the public and to rally support for undemocratic and unjust public policies, and that they therefore need to be challenged.⁸⁴

The stereotypes themselves are bolstered by equally contestable demographic and social assumptions that on the one hand there is a demographic time-bomb and on the other that the old constitute an homogenous social group, and the implications of these assumptions is that the ever growing numbers of old can and will act in a coherent political fashion in order to further their short-term, selfish interests. Again the fact that these assumptions are so often accepted as facts, and that they are so rarely challenged, give credence to both the ageist stereotypes they support and the necessity for radically discriminatory practices.

However, as we have seen, cultural ageist prejudice is not the only source of discrimination the old face, and the arguments of liberal academics often justify the same policies as cultural ageists, though they base them instead upon either utilitarian principles or an ethical concern for fairness. As noted above, utilitarian principles can both justify ageist policies in healthcare while at the same time challenging them in employment practices, provided that in each case either aggregate or total utility can be calculated to result from them. On the one hand, what underlies the utilitarian ageist defence in health is the calculation that because the old are ‘nearly dead’, they

⁸⁴ Alan Walker, ‘The Economic ‘Burden’ of Aging and the Prospect of Intergenerational Conflict.’

consequently have fewer years of happiness than younger people, and so less relative weight should be given to their utility. On the other hand, the utilitarian calculation that defends anti-ageism within employment claims that although 'nearly dead' the old should nevertheless be allowed to continue working because (within the current demographic environment) that will maintain the aggregate and total wealth of the country. However, the latter calculation is based upon a contingency that could feasibly change (i.e. demographic trends), while the former calculation, that old are nearly dead and their well-being less important, is immoral because the well-being of human lives should be valued equally irrespective of their projected duration. I do not suggest that all utilitarians make these calculations, and there may be many who do not, I am merely making the point that it is wholly consistent with utilitarian theory to calculate in this way.

In contrast with utilitarian theory the FIA and the CLV do not make judgements based upon contingencies, and in contrast to cultural ageism they do not involve false judgements concerning the moral and social value of people's lives. Consequently, there is nothing obviously morally wrong with the discriminatory practices based upon them. What they are based upon is the normative principle of fairness; that for the FIA, human life should be distributed in as fair a way as possible; and for the CLV, that material benefits should be distributed equally between the complete lives of separate persons.

What is needed to challenge the ageism within these contexts and others, therefore, is an ethic that defends anti-ageist policies in a moral and non-contingent way and which is consistent with the broader objectives of egalitarianism and liberalism. But

to do this we must challenge more than just cultural stereotypes. We also need to challenge the egalitarian defences of age-discrimination, and particularly the FIA and the CLV. If it can be shown that these principles have morally unjustifiable consequences even within the premises of egalitarian liberalism itself, then we can refute them in favour of a moral principle that respects the lives of individuals irrespective of their age. In addition, we also need an egalitarian public ethos that can determine the limits for which efficiency can be used as a reason to justify discrimination on the basis of age.

In 1998 Age Concern initiated and coordinated the ‘Millennium Debate of the Age’. The report of the working party examining social values claimed that the anti-ageist argument was ‘a position which has, perhaps surprisingly, been much less widely articulated or disseminated’ than the defences of ageism.⁸⁵ This is surprising because as the report claimed, an anti-ageist principle is ‘firmly grounded in established moral theory’, and is itself derived from the more general moral principle of equal concern for the like interests of all. The report articulated this underlying anti-ageist principle thus; ‘an individual’s entitlement to the respect and protection of the community, and to equal access to its opportunities, does not vary with age or life expectancy’.⁸⁶ The claim that this argument makes is that individuals are entitled to a synchronic equality of opportunity. At each stage of an individual’s life he or she is entitled to an equal access to opportunity. However, as we shall see below, synchronic equality of opportunity will interfere with the equality of opportunity between separate complete lives. And what the anti-ageist argument does not explain is why a synchronic access

⁸⁵ Age Concern England, *The Millennium Papers: Values and Attitudes in an Ageing Society* (London: Age Concern England, 1999), p28.

⁸⁶ Ibid.

to opportunity for older persons should overrule the view of many egalitarians that what is morally important is diachronic equality.

Another form of the anti-ageist argument has been defined by John Harris, which denies absolutely the relevance of age as a criterion of discrimination within the distribution of healthcare resources.⁸⁷ This anti-ageist argument claims that there is something that each of us values equally no matter how old we are, and that thing is 'the rest of our lives'. So long as we do not know the date of our deaths then for each of us 'the rest of our lives' is of indefinite duration, and we each suffer the same injustice if our wishes to continue living are deliberately frustrated.⁸⁸ Harris thinks that;

the anti-ageist argument has much plausibility. It locates the wrongness of ending an individual's life in the evil of thwarting that person's desire to go on living and argues that it is profoundly unjust to frustrate that desire merely because some of those who have exactly the same desire, held no more strongly, also have a longer life expectancy than others.⁸⁹

However, Harris's argument is pertinent only for the context of healthcare and of life and death situations. The challenge for those who oppose ageism, therefore, is to further develop the anti-ageist argument so that it incorporates all social contexts not just health, and to strengthen that argument we also need to situate it within an egalitarian political theory. By doing this we can challenge all forms of wrongful age discrimination wherever and whenever they occur, and do not need to rely upon contingent arguments for each particular social context.

⁸⁷ Harris, *The Value of Life: An Introduction to Medical Ethics*, chapter 5. Harris was in fact the chairperson of Age Concern's Millennium Debate working party examining social values and attitudes.

⁸⁸ Ibid, p89.

⁸⁹ Ibid, p90.

Chapter Two: Categorising age discrimination

The purpose of this chapter is to outline a taxonomy of age discrimination. This is necessary in order to establish a better understanding of the moral and social issue that is to be challenged. As noted in the Introduction, few of those who either justify or condemn ageism actually examine what it really constitutes. One exception is Harry Lesser who distinguishes three kinds of ageism: (1) using the mere fact of chronological age as grounds for adverse discrimination; (2) attributing to members of a particular age group a characteristic they do not in fact possess and using it as a ground for adverse discrimination; and (3) attributing to members of a particular age group a characteristic possessed by only some of them, and using it as a ground for adverse discrimination.⁹⁰ But this definition raises at least three separate yet closely related questions. Firstly, what actual harm is created by ‘adverse’ discrimination? Secondly, should our concept of ageism be limited only to the old or should it also include the young? And thirdly, to what extent is it appropriate to model ageism on the other forms of wrongful discrimination like racism and sexism? The first two questions will be examined within this chapter in order to help construct the taxonomy of age discrimination. The third question I examine in chapter 3 where I challenge the cultural form of ageism.

The next two sections outline the two fundamental distinctions of the thesis; the distinction between the moral and social worth of persons, and the distinction between a person’s diachronic and synchronic interests. The first distinction is fundamental to

⁹⁰ Harry Lesser, ‘Ageism,’ in *Encyclopedia of Applied Ethics, Volume 1* (Academic Press, 1998): 87-94, p87.

understanding cultural ageism, the second distinction has most significance for egalitarian ageism.

2.1 The moral and social worth of persons

We can make sense of the distinction between moral and social worth by examining a question that Ronald Dworkin raises regarding the value of a human life. Dworkin asks the question: 'Is human life subjectively or instrumentally or intrinsically valuable?'⁹¹ Firstly, something is subjectively valuable to people only if they personally value it and want it, rather like Dworkin's own preference for Scotch whiskey.⁹² Secondly, Dworkin argues that 'we treat someone's life as instrumental when we measure it in terms of how much his being alive serves the interests of others: of how much what he produces makes other people's lives better, for example'.⁹³ And thirdly, something has intrinsic value if that value is independent of whether or not it also has instrumental or subjective value. We treat human life as intrinsically valuable if we believe that 'we should respect and honor and protect' it 'as marvellous in itself', accepting it to be sacred and inviolable.⁹⁴ It is the instrumental and intrinsic forms of value that are important to the distinction between moral and social worth, and I shall examine each in turn.

⁹¹ Ronald Dworkin, *Life's Dominion: An Argument about Abortion and Euthanasia* (London: HarperCollins, 1993), p72.

⁹² It is a stereotype of the elderly that they do not put much value on their own lives, but I will put this to one side because it is not relevant to the distinction I am making here.

⁹³ Dworkin, *Life's Dominion*, p72.

⁹⁴ Ibid, p73. Dworkin actually makes a further distinction between two kinds of intrinsic value. Firstly an object may be intrinsically valuable and at the same time have incremental value in the sense that the more we have of that valuable thing the better. The second form, more obviously connected to the value of human life, is that intrinsic value an object may have which means it is sacred and inviolable, but not incremental.

The moral equality of persons is a common premise among most modern ethical positions, though it is the Kantian tradition that ascribes them non-derivative intrinsic value.⁹⁵ Every human 'exists as an end in himself and not merely as a means', and every human is of 'absolute worth' and hence equal worth.⁹⁶ This does not rule out the possibility that some people may acquire superior worth in other respects, but at a fundamental level all persons are equally worthy and deserving of a good life. To judge that a person has negative moral or intrinsic worth is to assume that her life is not sacred, inviolable or 'marvellous in itself'. The intrinsic moral worth of a person is therefore non-comparative in the sense that one either has it or does not.

As with other forms of discrimination ageism would seem most obviously wrong when it is based on a false judgement concerning the intrinsic moral worth of a person. Equal intrinsic worth applies to all persons irrespective of national or community barriers, and it is essentially what separates all humans from other animals and marks humans out as those beings with special moral claims and to whom we all owe special duties.⁹⁷ A person holds equal moral status to all others for her entire life, which is to say that persons enjoy diachronic moral equality. It is diachronic because at no synchronic point in a person's life would it be ethical to deny their equal moral worth. The strength of liberalism is that it involves the basic premise that each person

⁹⁵ Although utilitarians may deny the non-derivative value of human life they would nevertheless honour an equal moral value of individuals in the sense of requiring that each individual be given equal consideration. However, without accepting that human life has intrinsic value we cannot escape the implication that certain people could be sacrificed for the benefit of others, and, as we have already seen in the context of health care, this utilitarian implication presents serious problems for anti-ageists.

⁹⁶ Immanuel Kant, *Foundations of the Metaphysics of Morals*, Translated by Peter Heath. Edited by Peter Heath & J.B. Schneewind (Cambridge: Cambridge University Press, 1991), pp428, 435.

⁹⁷ Among utilitarians there are some who believe that moral equality should be extended to include animals rather than think of it as a quality that defines the difference between 'lower' animals and humans. See Peter Singer, *Animal Liberation* (New York: Avon Books, 1975).

should enjoy equal treatment, and no liberal would admit to holding judgements that certain individuals have less moral or intrinsic worth by virtue of their membership of a socially defined group.⁹⁸

To hold a moral bias is to hold judgements concerning the moral inferiority of a class of persons in virtue of some feature they possess. To be thought to lack moral worth involves others believing that your life is worthless and in the context of ageism the belief in one's negative intrinsic value would be in virtue of one's chronological age. A racist's moral bias would hold that it is less wrong to kill a black person than a white person, and an ageist moral bias would hold that it is less wrong to kill an elderly person than a youth.⁹⁹ In some racist societies the penalties for killing members of racial minorities have been very lenient while it remained a capital offence to kill a white.¹⁰⁰ In other societies, most notably that of the Eskimo, geronticide has been accepted practice.¹⁰¹ In a liberal society, in which all persons are judged to have moral equality, the killing of anyone is thought to be equally abhorrent irrespective of age, race or sex. This is despite the fact that, as Dworkin points out, most people are not outraged by the death of an elderly person in the way they would be in the case of a child.¹⁰²

⁹⁸ I will leave aside the problem of whether individuals suffering conditions such as dementia or permanent vegetative syndrome constitute 'persons', though this question has obvious importance.

⁹⁹ Although racists and cultural ageists may think it not intrinsically wrong to kill a black or an old person it may nevertheless be extrinsically wrong to do so because such actions would have consequences detrimental to society.

¹⁰⁰ Historical examples would include South Africa until the end of the Apartheid era, and the Southern states of the United States before the civil war.

¹⁰¹ See Simone de Beauvoir, *Old Age* (Harmondsworth: Penguin, 1977).

¹⁰² Dworkin, *Life's Dominion*, p88. Of course people are often outraged at the mugging of an old person than someone in their prime. However, we might speculate that at least some of this outrage is a manifestation of the perceived cowardliness of the crime rather than simply sympathy for the individual.

Moral bias may also be held unconsciously.¹⁰³ Larry Alexander points out that '[o]ur tastes are so heavily culturally influenced, and culture itself is so much a product of morally unrespectable views now discarded that the counterfactual world of untainted preferences is hard to imagine.'¹⁰⁴ Thus, unconscious moral biases may continue to be held by people even after personal reflection and they will tend to manifest themselves in the same way in society as conscious biases. So although unconscious bias may be less reprehensible than conscious bias, it may also be more recalcitrant and impervious to criticism. Unconscious prejudices are unlikely to be challenged by personal reflection on an individual basis because the individual is often unaware of having the prejudice in the first place. If such unconscious bias is thought to be widely held collectively, then it may be necessary to employ some form of positive discrimination in favour of members of the oppressed group and to make long-term changes in the social structure.

In contrast to intrinsic worth, social worth is only relevant to citizens of the same society, and it involves the degree to which others in the community judge one's value and contribution to others and to the society generally. A judgement that a person has negative social worth would mean that they are viewed by others to be of little social value, that they provide little or nothing towards the economy, and that they take more from the other members of society than they contribute. They would, in short, be a burden. Unlike moral worth, which is a status equally held by persons diachronically, the social worth held by persons is not necessarily the same

¹⁰³ See C.R. Lawrence, 'The ego, the id, and equal protection: Reckoning with unconscious racism,' *Stanford Law Review* 38 (1987): 317-389.

¹⁰⁴ Larry Alexander, 'What Makes Wrongful Discrimination Wrongful? Biases, Preferences, Stereotypes and Proxies,' *University of Pennsylvania Law Review* 141 (1992): 149-219, p192.

throughout their lives and it makes sense to say that a citizen might be perceived as having more social worth at one point in their lives than another. There is, therefore, a synchronic dimension to social worth that is potentially changeable, and it is a fundamental premise of many culturally oppressive stereotypes, and of cultural ageism in general, that the social worth a citizen has in old age is significantly lower than that which she held in her youth or middle-age.

It is important to note that the moral and social status of a person are independent of one another. Even if people think that a particular individual is socially worthless or even parasitic as a citizen, they may still accept her intrinsic moral worth as a person. Criminals, for example, are socially parasitic, but after imprisoning them we continue to respect their humanity by providing them with the means to live, and most people would think it morally wrong to deprive them of the means to satisfy their most basic needs and interests.¹⁰⁵

Likewise, it is sometimes assumed by younger people that while an elderly person is a moral equal they are nevertheless of limited or negative social worth. This cultural assumption is often reflected in the decisions made in distributing emergency and intensive medical care, and it is a stated reason that A.B. Shaw gives for his utilitarian defence of ageism in healthcare.¹⁰⁶ In a study examining decisions made in intensive care departments Renee Anspach claims that 'those perceived as having less social

¹⁰⁵ Thus individuals are sometimes simultaneously perceived to embody both equal moral worth and negative social worth, but the reverse is also possible: the position of slaves in some historical societies might suggest examples of where social value exists but where moral equality does not. Ancient Greek society could not have functioned without slaves, and we can imagine that many of the skilled slaves would have had great social value. But even slaves with high social value remained slaves, could be bought and sold, and did not therefore enjoy equal moral value with their masters.

¹⁰⁶ A.B. Shaw, 'In Defence of Ageism,' *British Medical Journal* 20 (1994): 188-91.

worth – the old and the deviant (drug addicts, alcoholics, and prostitutes) – were less likely to be resuscitated'.¹⁰⁷ Such life and death decisions are thus influenced by widely held assumptions that older people have negative social worth in the same way as other 'deviants' like criminals, and these are usually related to the false assumptions that older people are non-productive in either an economic or a social sense.

These are 'false' assumptions to make about the elderly as a group because while it may be true that some elderly individuals do not have much instrumental value many others are both economically and socially useful. Even if older people are not in paid employment many of them contribute substantially to the care of either old and infirm relatives or friends, or of grandchildren. In both cases they indirectly deflect the financial cost away from society which would otherwise have to pay for that care. Moreover, we should not simply measure social worth in economic terms, and many older persons are socially useful in the sense that they share meaningful relationships with others (both young and old) that sustain mutual well-being and provide moral support. An example of this supportive role played by the elderly is illustrated in a study that shows that where grandparents are involved in the care of a child there is less likelihood of that child being taken to an A&E department 'with minor or trivial conditions considered not to need treatment'.¹⁰⁸ The broader level of maturity and life experience that a grandmother has means the problem can be solved within the home environment to the benefit of both the family and the health services budget. Thus, it is wrong to assume that a person is of negative social worth in virtue of their

¹⁰⁷ Renee R. Anspach, *Deciding Who Lives: Fateful Choices in the Intensive Care Nursery* (Berkeley, University of California Press, 1997), pp44-45.

¹⁰⁸ E. Fergusson, J. Li & B. Taylor, 'Grandmothers' role in preventing unnecessary accident and emergency attendances: cohort study,' *British Medical Journal* 317 (1998): 1685-6.

chronological age. And it is intrinsically wrong to discriminate on that basis because it is wrong in itself regardless of any unjust consequences that it may also have. The figure below summarises some of the features of the moral and social worth of persons.

Social status	Moral status
1. Designates the instrumental worth of citizens to society and each other.	1. Designates the intrinsic worth of a person.
2. Pertains only to citizens.	2. Pertains equally to all persons.
3. Changeable and may hold at different levels at different synchronic points within a life.	3. Equal and continuous throughout a life.
4. To falsely deny this on the basis of chronological age alone is intrinsically wrong.	4. To deny this of any person is intrinsically wrong.

We have said that it is intrinsically wrong to provide someone with inferior treatment on the basis of a *false* judgement of negative social worth derived from her supposed membership of a social group. But this raises the interesting question of whether it would be justifiable to provide that same individual with inferior treatment if she *were in fact* of negative social worth to the community. Harris examines this problem in the form of what he calls the ‘moral advantage of usefulness’: whether the useful have a greater claim to life-saving treatment than the less useful. Harris concludes that ‘[a]ll that can safely be said is that all whose continued existence is clearly required so others might live have a good claim to priority’, and the one possible example he gives of such class one usefulness is that of ‘leading surgeons’.¹⁰⁹ Although this is not an entirely uncontroversial classification, and would not convey an absolute claim

¹⁰⁹ Harris, *The Value of Life: An Introduction to Medical Ethics* (London & New York: Routledge, 1985), p107.

to priority, any other kind of usefulness is doubtful. There are a number of reasons for this conclusion. Firstly, there is the problem of how we are to measure the respective levels of social usefulness, e.g. is the Managing Director of a large corporation as useful or more useful than a fire fighter? Secondly, those who are less socially useful may be so reluctantly, e.g. those with debilitating diseases or even those who are perhaps genetically lazy. It would seem wrong to penalise those who through no fault of their own are unable to contribute to the lives of others. Thirdly, there is the related problem of free will and of determining the level of responsibility each person has for his or her degree of social uselessness. Even criminals and drug addicts may have mitigating circumstances for their behaviour in the form of environmental influences on their character. Finally, and most importantly, in order to discriminate on an individual basis between the useful and useless requires that we arrogate to ourselves the punishment of the socially useless, and many people would find that morally abhorrent.

2.2 The synchronic and diachronic interests of persons

We have already come across the concepts of the diachronic and the synchronic aspects of a person's life when discussing the distinction between moral and social worth in the last section. This section now looks at a distinction between the synchronic and diachronic nature of our interests. My argument will be that these fundamental interests are linked to our intrinsic moral worth as human beings and that the fact that both egalitarian and cultural ageism neglect the fundamental synchronic interests of older people gives us reason to think the egalitarian justifications of such discrimination are flawed.

The distinction between the diachronic and synchronic has been developed by several thinkers.¹¹⁰ Elizabeth Anderson, for example, has incorporated the distinction within her ‘expressive theory of rational action’; a theory which claims that in order to express our concern for what we value we must generally follow social norms, which direct our decisions and the actions we take. Anderson calls the various ways a person could describe her relevant options, and the conception she has of her choices at any given time, as her *decision frame*. Within a decision frame there are ‘two global norms for making sense of one’s actions: one synchronic, the other diachronic’.¹¹¹ The synchronic norm tells a person at any given time to act in certain ways towards the things and persons she values. The ‘diachronic norm tells a person to act in such a way that over time her actions can fit in to a coherent narrative.’¹¹²

Individuals thus have two dimensions to their moral psychology. They may act in ways that express the value they give to subjects and objects, but they also hold synchronic and diachronic interests and may act in ways that affect the synchronic and diachronic interests of others. David Velleman agrees that individuals have both synchronic and diachronic interests, and argues that these interests are irreducible to one another.¹¹³ An individual has a synchronic interest in securing maximal well-being at each temporal moment, and a diachronic interest in securing maximal well-

¹¹⁰ Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, Mass.: Harvard University Press, 1993); J. David Velleman, ‘Well-being and Time,’ in his *The Possibility of Practical Reason* (Oxford: Clarendon Press, 2000); Alasdair MacIntyre, *After Virtue: A Study in Moral Virtue* Second Edition (London: Duckworth, 1985), chapter 15.

¹¹¹ Anderson, *Value in Ethics and Economics*, p23.

¹¹² Ibid, p24.

¹¹³ J. David Velleman, ‘Well-being and Time.’

being over a complete life. And, as Velleman argues, '[a] person's synchronic interests ... strike me as having an independent claim that is not necessarily overridden by that of his diachronic interests. The reason, I think, is that a person himself has a synchronic and diachronic identity.'¹¹⁴

If certain interests of a person must be recognised as claims of justice on society then what exactly are they? How do we distinguish between the synchronic and diachronic interests of a person? And how do those interests create obligations on the part of society to provide individuals with the necessary benefits to fulfil those interests? Naturally any list will be contentious and open to interpretation and is unlikely to be exhaustive. Nevertheless, the idea that certain interests people have act as normative preconditions for, or constraints on, distributive principles of justice is not alien to liberal philosophy. Ronald Dworkin uses a similar strategy in his search for the ethical foundations of liberalism.¹¹⁵ Dworkin outlines an account of what he calls people's *critical interests*, and he argues that those who accept that account and care about their own and other people's critical interests and critical well-being will be led to egalitarian liberalism.

As I am not associating the interests I am outlining with Dworkin's account I will not explain it in depth. However, Dworkin argues that while *volitional* well-being and critical well-being are not the same as objective and subjective, critical well-being has an objective dimension while volitional interests do not. Although these two forms of interest may often track one another (because people often want what they believe to

¹¹⁴ Ibid, p78. The word 'identity' is used here in the context of the moral psychology of a person rather than involving a thesis concerning the metaphysical nature of a person.

¹¹⁵ Ronald Dworkin, 'Foundations of Liberal Equality,' in *The Tanner Lectures on Human Values, Volume XI* (University of Utah Press, 1990).

be in their critical interests) they cannot be subsumed in to one another, just as Velleman's theory considers diachronic and synchronic interests to be non-reducible.¹¹⁶ My account of the interests of the person, like that of Dworkin's, focuses on what might be taken as the critical interests of the person, but it further claims that there are synchronic and diachronic dimensions to these which may conflict. Similarly I argue that one dimension of both our diachronic and synchronic interests incorporate the concept of needs.

The three particular interests that I identify for the purposes of this thesis are: basic needs, autonomy, and access to the social bases of self-respect, though these will often overlap.¹¹⁷ To take basic needs first, many contemporary liberal philosophers will deny that much sense can be made of the concept of need as a principle of distributive justice, and indeed it is subject to a number of objections.¹¹⁸ Firstly, 'need' is thought to be a morally loaded term which has pretensions to objectivity but which is often used by politicians and others simply for its rhetorical force. Secondly, the concept arguably has no cross-cultural content which lends to it certain relativism. Thirdly, it is ambiguous as to how an agreed schedule of urgency of need might be determined. Fourthly, there are the questions of how we should balance between different needs, and when enough of something can be said to have satisfied these needs. Finally, a distinction can also be made between the idea that people have needs

¹¹⁶ Dworkin argues that a fuller exposition of well-being would distinguish a third category of elemental or biological interests (or fundamental needs) but that these can figure within the two categories of critical and volitional interests. See Dworkin, 'Foundations of Liberal Equality,' footnote 3, p240.

¹¹⁷ Some conceptions of the principle of need would incorporate self-respect and autonomy. Here I accept that they may be separate.

¹¹⁸ The concept of need is of course fundamental to the Marxist tradition.

and the separate question as to the degree to which a political community should distribute benefits to meet those needs.¹¹⁹

There are several ways that a list of the needs that support claims of justice might be determined. However, I shall understand needs as being defined as those fundamental benefits that are preconditions of human living, and they would include such goods as shelter, nutrition and medical care. They are also benefits to which all human individuals that constitute equal moral worth have claims to. Needs are critical interests rather than volitional because we do not necessarily want what we need or need what we want, and needs obviously have a synchronic element because there are things I need for survival today irrespective of the goods I have enjoyed in the past or hope to enjoy in the future. For example, if I am injured today then I need medical attention today, not tomorrow or yesterday. The synchronic interest people have in fulfilling their basic needs will be particularly important within the discussion of egalitarian ageism in chapters 4 to 6.

The second fundamental interest I will be referring to is that of autonomy. Gerald Dworkin defines autonomy as the ‘second-order capacity to reflect critically upon one’s first-order preferences and desires, and the ability to either identify with these or to change them in light of higher-order preferences and values.’¹²⁰ Caroline Dunn notes there are internal and external constraints on autonomy, the former involving

¹¹⁹ One contemporary philosopher who does use an account of needs as a distributive principle within a conception of social justice is David Miller. See his *Principles of Social Justice* (Cambridge, Mass.: Harvard University Press, 1999). Miller expounds a plural theory embodying the three principles of desert, equality and need.

¹²⁰ Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988), p108.

limitations on oneself, and the latter by the actions of others.¹²¹ Dunn argues that the various threats to the autonomy of the elderly include both the internal constraints of mental and psychological decline and the socially generated threats involving the widespread set of negative perceptions of old age. Moreover, as we shall see in chapter 3, socially generated threats in the form of many negative cultural stereotypes affect the psychology of older persons if the negative meanings they involve are internalised. The capacity to enjoy autonomy therefore relies heavily upon the attitudes and activity of others, and it has a synchronic dimension in the sense that a person can have more or less of it at different points in their lives. We nevertheless always have a synchronic interest in being autonomous.

The third interest that I refer to in this thesis is that which we have in enjoying what Rawls has described as the ‘social bases of self-respect’, the importance of which he views as being at the core of a theory of justice.¹²² Rawls views self-respect as being the most fundamental of the primary social goods, i.e. those goods that anyone rationally wants whatever else he wants, and he argues that this is significantly affected by the ‘basic structure of society’.¹²³ As Robin Dillon argues, ‘[w]hether individuals respect themselves or not is very much a function of their social relationships and of the structure and functioning of the institutions among which they live; when these relationships and institutions are unjust, discriminatory or oppressive, self-respect can be diminished, distorted or destroyed.’¹²⁴ Moreover, ‘the very nature

¹²¹ Caroline Dunn, ‘The effects of ageing on Autonomy,’ in Harry A Lesser, *Ageing, Autonomy and Resources* (Aldershot: Ashgate, 1999): 7-22.

¹²² John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971, Revised edition 1999).

¹²³ *Ibid*, p62.

¹²⁴ Robin S. Dillon (ed.), ‘Introduction,’ in *Dignity, Character and Self-Respect* (New York: Routledge, 1995), p36.

and meaning of self-respect and how it is constituted and secured are subject to social construction, and the evaluation of such construction involves issues of social justice.¹²⁵ Self-respect is vital to an individual's ability to pursue and fulfil their life-plans, and since its bases are social, it is a matter of social justice that institutions and policies must be designed to support rather than to undermine self-respect.

Two questions arise, however. Firstly, what do we mean by self-respect? It might be argued that the concept is somewhat elusive, and in any case it may be regarded as a personal responsibility of an individual to promote her own self-respect rather than it being an obligation of society. To make sense of the concept we must first acknowledge that there are two uses of term 'respect' in ordinary discourse. One can use respect in the sense that a moral theory respects all persons equally, and one can use it in the sense that we can respect a person who performs his job well. While Rawls conflates the two senses Larry Thomas calls them 'respect' and 'esteem' respectively.¹²⁶ David DeGrazia outlines the following analysis of the two concepts.

Respect: A respects B if and only if A believes B possesses moral status, i.e. believes that B's interests, especially B's most fundamental interests, must be defended and upheld.

Esteem: A esteems B if and only if A regards the abilities, achievements, or character traits of B as impressive or valuable and, other things equal, worthy of emulation.¹²⁷

Defining *self-respect* and *self-esteem* just requires the case where B is at the same time person A. Thus:

¹²⁵ Ibid, p37.

¹²⁶ Larry Thomas, 'Morality and Our Self-Concept,' *Journal of Value Inquiry* 12 (1978): 153-178.

¹²⁷ David DeGrazia, 'Grounding a Right to Healthcare in Self-Respect and Self-Esteem,' *Public Affairs Quarterly* 5 (October 1991): 301-318, p303.

Self-Respect: A has self-respect if and only if A believes herself to possess moral status, i.e. believes that her interests, especially her most fundamental interests, must be defended and upheld.

While esteem may be held in degrees, respect in the moral sense contains the notion of full respect as a finite quantity, or what is normally understood as what all persons are due. The concept of respect is therefore closely related to the intrinsic moral worth of all persons outlined in the previous section. Although respect and self-respect are logically independent they will nevertheless tend to be closely related, and as Rawls argues, if we do not enjoy the respect of others then we are unlikely to respect ourselves.¹²⁸ Our convictions about our moral status can be affected by others including their belief that we have inferior moral status. Self-respect is also affected by one's self-esteem, and when the latter is low this may in turn diminish the former.

The second question that arises in this discussion of the interest of self-respect is how society would go about promoting it. The question arises especially as some people's self-respect, like some people's happiness, will always be lower than that of others, and while some people will have a predisposition for depression others will have one for self-loathing. Nevertheless, although society may not be able to ensure that everyone enjoys self-respect they can provide for the social bases of such a good, or at least remove or prevent institutional and ideological obstacles to the holding of self-respect by individuals.

¹²⁸ It is of course perfectly possible that a person could have such disdain for the opinions of others that they could continue to have self-respect while at the same time aware that others held them in contempt.

Rawls defines the social bases of self-respect as things like the institutional condition that citizens have equal basic rights and the public recognition of that fact,¹²⁹ and DeGrazia argues that these should include an equal right to healthcare.¹³⁰ Among the social conditions that DeGrazia believes significantly undermine both self-respect and self-esteem are; bigotry (i.e. attitudes and negative cultural stereotypes); unemployment; and lack of access to healthcare. Imagine, therefore, the following two examples. Firstly, as we noted in chapter one, GPs regularly apply age limits to older patients when arranging such treatments as knee replacements, kidney dialysis and heart bypass operations. These are of course needs that are being denied, but the self-esteem and self-respect of an older patient will also surely be affected by her perception of society's low regard for her health needs. Needs for medical treatment to prolong one's life are fundamental if the person in question wishes to continue living, whatever their age. If society is not prepared to defend and protect that fundamental interest because a person is older then, by DeGrazia's definition at least, it does not respect her. And, if we accept that Rawls is correct in thinking that one's self-respect is linked to the respect that we perceive others to have for us, then it seems inevitable that the self-respect of the older person denied treatment on the basis of their age will consequentially be diminished.

Equal access to healthcare would of course obviate an older person's perception that society disrespects her, and her self-respect could be preserved even if her health did not improve as a result of treatment. Thus, for example, if a lottery system was to be used as a rationing device for health care rather than age, whereby each citizen had equal access to that lottery and equal chances of treatment, then even if those

¹²⁹ Rawls, *Justice as Fairness*, pp59-60.

¹³⁰ DeGrazia, 'Grounding a Right to Health Care in Self-Respect and Self-Esteem.'

individuals were not chosen the self-respect of those denied treatment would have no reason to feel they were disrespected.¹³¹

A second example is taken from Bill Bytheway's book *Ageism* in which he interviewed a fit and healthy 58 year old ex-steelworker who was retrenched in 1980.¹³² This older worker, we'll call him Bob, first sought employment at the Job Centre but was told that there were few firms willing to take on workers over 40, and that in effect he was 18 years too old to find employment. Bob then applied for a vacancy on a bricklaying course. He passed a physical and written exam and was accepted on to the course before the somewhat unobservant instructors finally noticed his age. But once they did become aware that he was 58 they applied informal pressure on Bob in the form of constant supervision until he agreed to drop out. Bob was denied access to one of the social bases of self-respect, i.e. access to meaningful employment, purely on the basis of his age and despite his proven ability to do it. And his self-esteem and self-respect may well have been damaged as a consequence.

Therefore, the self-esteem and self-respect of older individuals may well be diminished by being denied goods and liberties such as employment, health care, voting rights, and sufficient income support. The fact that each person has a fundamental synchronic interest in enjoying self-respect, which, in turn is connected to their moral worth as persons, gives society reason to ensure older individuals access to those goods.

¹³¹ See John Broome, 'Selecting people randomly,' *Ethics* 95 (1984): 56-67; Jon Elster (ed.), *Justice and the Lottery* (Cambridge: Cambridge University Press, 1988).

¹³² Bill Bytheway, *Ageism* (Buckingham: Open University Press, 1995), pp3-4.

The diachronic interests each person has are those interests in their lives going well as a whole over its complete duration. They include whether goals and plans give a life meaning and coherence, and will include such things as; the pursuit of a meaningful career, longstanding personal relationships, raising a family, and other long-term projects that involve large investments of effort over time.¹³³ Naturally many of the interests I perceive myself to have at any temporal moment will be shaped by the long-term projects I am pursuing, but they certainly won't all be. It is often assumed by thinkers and lay people alike that the diachronic interests of people will be more or less fulfilled, or as substantially fulfilled as is likely, by the time they reach old age. This is one of the 'instinctive assumptions' that Dworkin makes when explaining his 'frustration theory' as to why people feel that it is a greater tragedy when a young person dies than when an old person dies.¹³⁴ But this assumption implies that synchronic interests are reducible to one's diachronic interests, and if so then it also implicitly justifies the restricting of benefits from the old on the basis that they have very limited interests. If we assume that, on the one hand, our diachronic interests are all but fulfilled by the time of old age, and if, on the other hand, we believe that all our synchronic interests are entirely shaped by our long-term interests, then we would have to say that old people could not be thought to have any interests at all. The only way they could be thought to have synchronic interests would be if they had the capacity to develop new diachronic interests in their old age, but it is another ageist assumption that old people naturally do not have this capacity. Moreover, it is

¹³³ Of course I may choose to neglect some of my synchronic interests for a period while I pursue certain diachronic goals. For example, I might wish to work feverishly to finish a work of art and neglect to maintain my nutritional status.

¹³⁴ Ronald Dworkin, *Life's Dominion*, chapter 3. Basically there is a greater frustration of the investments made by both the person themselves and others to the extent that those investments are not fulfilled. As old people are assumed to have substantially fulfilled those investments, the frustration caused by their deaths is relatively benign.

assumed that they would not want it. Thus, old people are often thought to have no interests at all whether synchronic or diachronic. What I have argued in this section is that each person does have fundamental synchronic interests, that they are related to our intrinsic moral worth as persons, and for that reason they should not be neglected.

2.3 Ageism and youthism

The second question I identified at the beginning of this chapter that arises in any discussion of ageism is whether or not the concept should include discrimination against young people. There would seem to be few grounds in principle for confining the concept of ageism to older age groups, and some definitions of ageism are ambiguous because it is not made explicit whether they ought to be thought of as inclusive in this way. Bytheway, for example, argues that ‘the ageism experienced by young people is the same phenomenon as that experienced by older people, but the experience itself is radically different.’¹³⁵ But he does not explain *why* it is radically different.

Sandra Fredman does explicitly restrict her discussion of ageism to that directed against the old, and points out that while the young will grow out of their age group and escape youth discrimination, older people cannot escape their age and the attached stigma and stereotyping, material disadvantage and social exclusion.¹³⁶ Old age can therefore be thought of as immutable in a way that youth is not, and consequently ‘discrimination against older people has closer links with gender discrimination and disability discrimination than it has with discrimination against

¹³⁵ Bytheway, *Ageism*, p13.

¹³⁶ Sandra Fredman, *Discrimination Law* (Oxford: Oxford University Press, 2002), p60.

younger people.’¹³⁷ Nevertheless, Fredman’s observation that ageism against the old and that against the young are in some ways qualitatively different for those who experience them does not explain why it is relevant that young people have a *future* that is free from being affected by stigma and stereotypes, while it is not relevant in the case of the old that they have had a *past* that was free of such oppression.

On the face of it there would seem to be many issues that although perhaps experienced differently, are nevertheless similar in both ageism and youthism.¹³⁸

Firstly, ageing is a process rather than a fixed feature about individuals, and a process that is different for each individual. Thus, while there is no biological or psychological point at which old age begins, so too is there no point at which childhood ends and adulthood begins. Secondly, both groups are the subjects of moral panics that regularly develop within society. In chapter 1 I described the currently ongoing moral panic over the perceived ‘demographic time-bomb’ facing society with the large increase in the proportion of old people relative to young, and the attendant worries of an increase in the power of the old to consume more than their fair share. Similarly there are regular panics concerning young people who are often perceived as a threat to social order and established morality. Just as the old are often seen as out of date, obsolete, burdensome, and redundant to a productive society, so the young are often seen as immature, impressionable, idealistic and lacking insight into how the real world works. For both groups these characteristics would seem to make them ill-suited to have much control on the destiny of society, but rather that they themselves need controlling.

¹³⁷ Ibid.

¹³⁸ These similarities will often be ignored by those who defend the interests of either one or the other group.

A third similarity between the two groups of young and old is that they are both perceived to be vulnerable to harm from others and at the same time dependent upon others for the satisfaction of their needs. Just as Help the Aged and Age Concern regularly remind us of the poverty and physical abuse experienced by many older people, so to do groups that represent the interests of children regularly remind us of the poverty and abuse experienced by many children. Figures released by the Child Poverty Action Group show that Britain had 3.9m children living in poverty in the year 2000/01,¹³⁹ while some 7% of children suffer physical abuse in their own homes from their parent or carers.¹⁴⁰

A fourth similarity, related to vulnerability and dependence, is that both the old and young must make 'trade offs' between their synchronic and diachronic interests. And this introduces the idea of paternalism because, while both a very old person and a very young person each have a synchronic interest in autonomy, it will not always be in the interest of their well-being to exercise it. For that reason it is sometimes difficult to determine the correct balance between their autonomy and their safety. Some degree of autonomy is good for a child's development but he cannot be allowed to choose whether or not he goes to school each day, because that would obviously not be in his long-term diachronic interests. The synchronic interests he has in autonomy is sometimes therefore in conflict with his diachronic interest in reaching adulthood with as many options open to him as possible, and so in having as good a life as possible as a consequence. Similarly, an old woman in her 80s may wish to

¹³⁹ Child Poverty Action Group, *Child Poverty Figures: Very Disappointing* (London: CPAG, 11 April 2002).

¹⁴⁰ NSPCC, *Child Maltreatment Survey* (London: NSPCC, 2000).

embark on a long trip that her family and GP believe will irreparably damage her health, and they may try to prevent her from exercising her right to autonomy for this reason. This conflict between synchronic and diachronic interests, and the recognition of vulnerability and dependence as a condition of both adults and children, is particularly significant as parallels between the two phenomena of ageism and youthism.

Child liberationists, or 'kiddie libbers' as they have been called, like John Holt, argue that children should have the same rights as adults including the right to vote, to determine their own education, engage in sexual activities, and to use drugs.¹⁴¹ He argues that to deny children these rights is both paternalistic and oppressive. The usual response to suggestions like Holt's is that children should not have these rights because they lack the ability to exercise them in a responsible way, and that enjoying such rights would be detrimental to both their immediate as well as their long-term well-being. Children undoubtedly lack the foresight and insight that comes from maturity and life experience to weigh their synchronic and their diachronic interests. Therefore, rather than releasing children from oppression, giving them equal rights with adults would leave them open to abuse and exploitation by manipulative manufacturers and paedophiles. Such liberty would inevitably lead to the oppression of children rather than their release from it.

In line with the terminology within this thesis we can characterise these different views about paternalism and child liberation in the following way. Holt believes that the traditional paternalist approach to the protection of the interests of children is that

¹⁴¹ John Holt, *Escape from Childhood: The Needs and Rights of Children* (London: Penguin, 1974).

it gives too much weight to their diachronic interests and insufficient concern for the synchronic autonomy. However, Holt's answer is to give exclusive weight to a child's synchronic interests to autonomous choice and this would bring them predictable harm. The problem has parallels with a criticism I raise against egalitarian ageism in chapters 4 and 5 in that, by implicitly or explicitly assuming the CLV and giving exclusive weight to the diachronic interests of persons, the synchronic interests of the elderly may be consequently harmed.

One approach to the problem that focuses upon the interests of the child is that of John Eekelaar.¹⁴² This approach identifies three different interests that the child has; *basic interests* necessary to the child's well-being such as adequate food, clothing and shelter, and the promotion of her physical, emotional and intellectual care; *developmental interests* such as education and a rational socialisation; and *autonomy interests* that a child has in making decisions for herself. While basic and developmental interests are unlikely to conflict, there is a strong possibility that both will come into conflict with the child's interests in exercising her autonomy. However, where a clash between these interests does occur, Eekelaar argues that developmental and basic interests should trump the interest of autonomy.

That children have an interest in being able to make decisions for themselves, Eekelaar believes, should be respected by adults provided those decisions do not infringe their basic or developmental interests, or endanger their diachronic interests in having as good a life as possible. The aim of this approach is '[t]o bring a child to the threshold of adulthood with the maximum opportunities to form and pursue life-

¹⁴² John Eekelaar, 'The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determinism,' *International Journal of Law and the Family* 8 (1994).

goals which reflect as closely as possible an autonomous choice.’¹⁴³ Children should be allowed to make even bad decisions for themselves, and allowing them this experience will also help to develop their skills in making choices and predicting the consequences of those choices, but also develop their self-respect and self-confidence. Eekelaar calls this a dynamic of self-determination, and ‘the process is dynamic because it appreciates that the optimal course for a child cannot always be mapped out at the time of decision, and may need to be revised as the child grows up. It involves self-determination because the child herself is given scope to influence the outcomes.’¹⁴⁴

Presumably, however, this approach would continue to involve some level of paternalism until such time that the individual is deemed to be sufficiently mature that their various interests no longer need to be balanced by a third party. Otherwise, as Jonathan Herring points out, the approach could be extended to justify restrictions on the rights of individuals to autonomy throughout their lives.¹⁴⁵ For example, a twenty year old who enjoys a hedonistic lifestyle rather than studying or developing her career is restricting her interest in autonomy in later life, as is a middle-aged person failing to provide finance for her retirement. If there is no biological or psychological cut off point when people become adults then perhaps paternalism is an approach that should be followed throughout life. However, Herring argues that Eekelaar’s approach provides us with a reason for distinguishing between the treatment of those incapable of decision-making as children and those whose incapacity is due to illness

¹⁴³ Ibid, p53.

¹⁴⁴ Ibid, p48; fn62 on p156.

¹⁴⁵ Jonathan Herring, ‘Children’s Rights for Grown-ups,’ in Sandra Fredman & Sarah Spencer (eds.), *Age as an Equality Issue* (Oxford: Hart Publishing, 2003), p157.

in old age, because 'Eekelaar's emphasis on leaving the child with an open future would have no application for an incompetent person near the end of their lives.'¹⁴⁶

Thus, although there is no obvious reason why a theory of ageism and old age should not also be applicable to youth there has nevertheless been a tendency for writers and commentators to examine the two temporal ends of human life as different entities and in isolation from one another. Nevertheless, there are strong parallels between Eekelaar's theory and the one that I present in this thesis, i.e. that individuals have both temporal and complete life interests and that these might conflict and may require a degree of balancing. Thus, while it is not possible to come to a definitive conclusion it is important to recognise the parallels that exist between ageism and youthism, and the taxonomy of ageism outlined below would be applicable to youthism as well.

2.4 Is ageism the problem or just poverty?

There are of course those who argue that the concepts of ageism and age discrimination are really not problems for society or any of its citizens. Richard Posner, for example, argues that ageism is not really something that exists outside the minds of 'some radical egalitarians' who 'see discrimination everywhere'.¹⁴⁷ It is undeniable that there are many older persons who are materially comfortable, especially with the final salary pensions enjoyed by the professional classes up until recently, and along with acronyms like 'Yumpies' (young upwardly mobile people)

¹⁴⁶ Ibid, p156.

¹⁴⁷ Richard Posner, *Aging and Old Age* (Chicago & London: The University of Chicago Press, 1995), p204.

there have been 'Jollies' (Jet-setting oldies with lots of loot), 'Opals' (older people with affluent lifestyles), and 'Woopies' (well-off old people). Indeed, as we have seen in chapter 1, there is a particularly prominent stereotype in the United States which holds that a comparatively well-off elderly social group uses its electoral power to systematically divert public funds away from destitute children for their own selfish benefit. However, these well-off individuals have in fact always been in the minority and their existence does not detract from the very real poverty of many very old people (as opposed to the recently retired), or the many others who are from less affluent social classes. To point to the Jollies does not disprove the existence of ageism as a form of cultural oppression any more than a minority of wealthy blacks disproves the existence of racism.

Nevertheless, these criticisms of the concept of ageism rather miss the mark as far as the purpose of this thesis is concerned. The question might be posed as to why we should examine ageism when what we should really be concerned with is poverty. Those that defend the interests of the old will often use the stereotype that members of that group suffer poverty to a proportionately higher degree, or else they argue that the generational equity debate is itself based upon the stereotype that the older age-groups are proportionately better off than other needy groups. However, this is precisely the confusion and conflation of stereotypes and issues that makes any discussion of ageism, both its nature and wrongfulness, problematic. What this thesis seeks to do is to tackle the two substantive conceptions of wrongful age discrimination, or ageism; the egalitarian justification on the basis of age alone (subject to the acceptance of the CLV or FIA), and the culturally oppressive ageism that involves cultural stereotypes which convey negative judgements regarding the

moral and social worth of older people. My claim is that much of the confusion over the nature and wrongfulness of the concept of ageism may be the consequence of failing to make these two conceptions more explicitly separate. Neither of these conceptions of ageism can be reduced to the idea that the old are either rich or poor, or that they perceive of themselves as a self-interested social group.

2.5 The ageism taxonomy

The aim of this section is to construct a taxonomy of the different forms of age discrimination, both those that are wrongful and those that are benign, and to briefly outline the main distinctions between them. Age discrimination may either be intrinsically wrong because it is based upon and motivated by moral or social judgements of negative worth, or else it can be extrinsically wrong in the sense that it involves the neglect or thwarting of certain fundamental synchronic interests of the elderly. The term ‘ageism’ is defined here as *wrongful* age discrimination. The taxonomy to be developed can be summarised in the figure below.¹⁴⁸ The most wrongful forms are then discussed in much greater depth over the rest of the thesis. Cultural ageism is examined in chapter 3, and egalitarian ageism over chapters 4 to 6. The wrongfulness of ageism motivated by reasons of efficiency can be subsumed into egalitarian ageism insofar as the extrinsic reasons for its wrongfulness are the same (although of course the reasons that motivate it are different).

¹⁴⁸ I do not suppose that this taxonomy is exhaustive, and there may be further forms of age discrimination that I have not thought of. Note also that idiosyncratic ageism has been defined as extrinsically benign to the extent that those individuals holding intrinsically wrong judgements do not act on them in such a way as to harm the interests of older persons. It is, however, likely that they would.

Taxonomy of Age Discrimination

	Extrinsically wrong	Extrinsically benign
Intrinsically wrong	(i) Cultural ageism; based on <i>(a) Negative moral judgements</i> <i>(b) Negative social judgments</i>	(ii) Idiosyncratic ageism
Intrinsically benign	(iii) Egalitarian ageism (iv) Ageism motivated by reasons of efficiency	(v) Positive age discrimination (vi) Egalitarian based age discrimination

(i) Cultural ageism

What I have called cultural ageism is wrongful for the two reasons set out in the first paragraph of this section. Firstly, it is intrinsically wrongful because it is based upon false negative judgements regarding either the moral or social status of individuals merely in virtue of their age. Secondly, cultural ageism is extrinsically wrongful because when people are motivated by those false judgements to act in certain ways, these actions will lead to unjust consequences for older persons. Such negative moral and social judgements about other people are rarely if ever held by persons on a random basis, and would usually be secondary to a more widely held set of beliefs or ideology in society. As we have seen in the previous chapter, there is much evidence to suggest that such an ageist ideology does exist, and because it involves cultural stereotypes and the assumed existence of social groups this ideology is a form of cultural oppression.

The consequences of cultural ageism for older people may run along a continuum. At one end of this continuum minor preferences of older persons may be thwarted by those who hold negative judgements regarding their worth, while physical violence and death may result at the other end depending upon the virulence of the moral bias held against them by others. Nevertheless, as we shall see in chapter 3, the consequences of cultural ageism are not limited to the restricting of the rights of older people to access various social and private goods, or even to those things necessary to satisfy their basic needs. The consequences of cultural ageism, as with any culturally oppressive ideology, will also include the potential for many of the victims to internalise the negative cultural meanings that the oppressive stereotypes convey, and, as a result, may even come to accept the discrimination they face as natural or just. Such internalisation and self-abnegation then leads to an undermining of the self-respect of older persons and so diminish their capacity to make autonomous choices.

Another consequence of cultural ageism is that it may be self-reinforcing. That is, insofar as the discriminatory actions that are motivated by cultural stereotypes express negative judgements regarding their moral and social worth those actions thereby confirm the inferior status that many people assume older people to embody. In chapter 3 we see how, as a consequence of the reactive qualifications many employers look for when recruiting employees, such discriminatory actions reinforce negative cultural judgements. Thus, cultural ageism consists of both judgements of negative moral and social worth, but, although these are qualitatively different in theory, the discriminatory treatment they motivate may in practice not substantively differ for the victims.

(a) Cultural ageism motivated by judgements of negative intrinsic moral worth

This form of ageism involves individuals holding a moral bias, a judgement that those who are of a certain chronological age, or who share the visual features and supposed characteristics of the old thereby lack intrinsic moral worth merely by possessing those traits. As I noted in section 1, most non-consequentialist moral theories acknowledge that each person embodies intrinsic moral worth, and I argued that this moral worth remains equal and unchanging throughout the life of a person. Thus, the assumption that older people no longer possess this status relates to the second ‘kind of ageism’ distinguished by Lesser, i.e. the ‘attributing to members of a particular age group characteristics they do not in fact possess and using it as a ground for adverse discrimination.’¹⁴⁹ These negative moral judgements will also tend to be categorical in the sense that those that hold them would think them valid in all social contexts, and would seek to always avoid the company of older people.

(b) Cultural ageism motivated by negative judgements of social worth

This second form of cultural ageism is based upon the judgements that question the social use of older people, or their ability to contribute to the well-being of their community and to other citizens within it. In contrast to the diachronic nature of the intrinsic worth of persons, social worth is synchronic in the sense that it may differ for a person at different parts of their lives, and it applies only to citizens rather than to persons. It applies only to citizens because to have social worth involves an individual being an actively participating member of a cooperative community working towards

¹⁴⁹ Lesser, ‘Ageism,’ *Encyclopedia of Applied Ethics*, p87.

mutual advantage, and it is only individuals who are at the same time citizens of a society that are such participants.

It is true that some older persons will embody less social worth because they are either unable to actively participate or do not wish to, but it is certainly not true of all. Moreover, old people often contribute to the economic and social well-being of both the society as a whole and to fellow citizens in ways that are not readily recognised. For this reason this second form of cultural ageism relates to Lesser's third kind of ageism, that of 'attributing to members of a particular age group characteristics possessed by only some of them, and using it as a ground for discrimination'.¹⁵⁰ As noted above, it would, in any case, be wrong to discriminate against individuals and penalise those who, although perhaps embodying less social worth, nevertheless wish to participate. Society should instead seek ways to provide them with that capacity and so recognise their social worth. We should also note that, again in contrast to negative moral judgements, judgements of negative social worth will sometimes be contextual rather than categorical, and that older persons would often be thought to embody less social worth in some social contexts but not in others.

(ii) Idiosyncratic ageism

We have said that individuals would normally hold judgements regarding the negative moral and social worth of others because those judgements are part of a more widely held ideology within society. However, it is possible that some people hold negative moral judgements that are idiosyncratic in the sense that they are not the product of a

¹⁵⁰ Ibid.

widely held culturally oppressive ideology, but rather of the psychological peculiarities of the individuals that hold them. Imagine for example that I believe that people with red hair are morally inferior. Although there are a few stereotypes about red-headed people being more hot-tempered than the average person, this is an insufficient basis for many people to think that they embody negative moral worth. Thus, such negative moral judgements about red-heads do not manifest a form of cultural oppression, and my holding those beliefs are an idiosyncratic form of intrinsically wrong discriminatory judgement. It is intrinsically wrong because it involves judgements of negative moral worth, but as it is not part of a culturally oppressive ideology, the consequences for any individuals affected will be isolated rather than systematic. Indeed, an intrinsically wrong idiosyncratic moral bias would in fact be extrinsically benign to the extent that the individual holding it does not act on that prejudice and harm the interests of others. Moreover, because it is not part of a cultural ideology it is unlikely that individuals will internalise an idiosyncratic moral bias. Nevertheless, it is unlikely that any negative judgements regarding the elderly would not be a product of cultural ageism, and even if it were so the effects of an idiosyncratic bias against older people would be indiscernible from cultural ageism. Thus, idiosyncratic ageism has been defined in the table on page 83 as extrinsically benign to the extent that those holding such judgements do not act on them in such a way as to harm the fundamental interests of older persons. However, in practice it is likely that they would.

(iii) Egalitarian ageism

This form of ageism owes its wrongfulness neither to negative judgements of social or moral worth, or to the consequences of discriminatory practices based upon such judgements. Rather, egalitarian ageism owes its wrongfulness to the consequences of a strict application of egalitarian principles such as the complete life view (CLV) and the fair innings argument (FIA), and for that reason it is consequentially or extrinsically wrong. The explicit or implicit acceptance of the complete life view (CLV), for example, recognises that the interests of each separate person should be given equal consideration over their complete lives, and this justifies providing each person with an equal diachronic share of benefits. However, the CLV logically condones what Dennis McKerlie has called 'taking places egalitarianism', which permits one part of one's life in which we are poor to compensate for another part of our lives when we are well off.¹⁵¹ If the CLV is accepted as a premise of political morality then it will condone the restriction of benefits to the elderly (or to the young) if that meant greater equality over a complete life between separate individuals. Such concern for diachronic equality thus leads to a neglect of the fundamental synchronic interests of individuals, and it may be wrong for that reason. Therefore, egalitarian ageism relates to the first of Lesser's taxonomy of ageism, that of 'using the mere fact of chronological age as grounds for adverse discrimination'.

¹⁵¹ Dennis Mckerlie, 'Equality and Time,' *Ethics* 99 (1989): 492-502.

(iv) Ageism based upon reasons of efficiency

As we have seen in chapter 1 discrimination against older people is often motivated by a concern for efficiency. This is especially the case within the distribution of health care where health economists seek to maximise the efficiency of the finite resources at their disposal in order to ensure maximal welfare for society as a whole. The concept and use of the QALY is an example of this. As far as the argument of this thesis is concerned, though, such policies would be wrong for the same reason that egalitarian ageism is wrong, i.e. to the extent that they manifested the neglect or thwarting of the synchronic interests of individuals.

(v) Positive age discrimination

This form of age discrimination is particularly contentious for two reasons. Firstly, it is pulling in the opposite direction to all the other categories of discrimination within this taxonomy and actually implies that discriminating on the basis of age is morally required. Secondly, the concept of positive age discrimination is contentious because any negative age discrimination against the old might equally be portrayed as positive discrimination in favour of the young.

Positive discrimination in the context of race and gender is motivated for two reasons; firstly, to bring about an equality of opportunity between black women and white men; and secondly, as a way of challenging negative cultural stereotypes. These goals are closely linked in the struggle against racism and sexism because by overcoming the negative cultural stereotypes the members of these groups are more likely to enjoy

diachronic equality of opportunity with white men in the long-term. However, within the context of age these two goals are detached because positive age discrimination in essence promotes one part of an individual's life over another part, and diachronic equality is itself a justification for discriminating against the old. Nevertheless, as I discuss in the next chapter, if we detach the two goals then positive age discrimination may still have a role in challenging cultural stereotypes, though this is likely to conflict with diachronic equality. Moreover, an appeal to positive age discrimination would probably only be applicable within the social context of employment recruitment and training, because, as I noted in chapter 1, that social context is the one most obviously influenced by cultural ageism.

(vi) Egalitarian based age discrimination

This form of age discrimination is both intrinsically benign because it involves no culturally oppressive moral or social judgements, and it is extrinsically benign because the consequences do not violate the fundamental synchronic interests of the old. Indeed, discriminatory treatment that is based upon reasons of efficiency should show equal concern for the synchronic interests of all citizens. And it should do this even if they involve categorising people into age groups for the purposes of efficiency. One example might be the free influenza jabs that are offered to the elderly. The reason they are freely offered is because the state wants the elderly to take the jabs almost as much as older individuals would want to take them. However, the practice shows an equal concern for the synchronic interests of *all* citizens, and not just the elderly, because by ensuring the elderly are less affected by the flu virus each year means there will be less of a bed shortage in hospitals during the winter.

The degree to which egalitarian based age discrimination is to be permitted would again be constrained by the moral requirement that the fundamental synchronic interests of the elderly (or of any other age group) are neither thwarted nor neglected as a consequence. The problem in practice is determining where that threshold would lie.

Concluding remarks

This chapter has drawn two fundamental distinctions that allow the construction of a taxonomy of age discrimination. Cultural ageism is intrinsically wrong and is defined in terms of negative judgements that derive from a widespread culturally oppressive ideology. These judgements may concern either the social or moral worth of an older person. In contrast, egalitarian ageism is thought by many to be justified by normative reasons of equality rather than negative moral judgements, and it is therefore intrinsically benign. Egalitarian ageism is nevertheless extrinsically wrong to the extent that it has consequences that harm the synchronic interests of older persons. Cultural ageism is the more obviously wrong and will be discussed in the next chapter. Egalitarian ageism is more complex and will be discussed, along with its wider implications for egalitarian political theory, over chapters 4 to 6. Ageism that is motivated by reasons of efficiency will not be much discussed on its own because the reasons for which it is wrong are essentially the same as for egalitarian ageism: it harms the fundamental synchronic interests of older persons. The three extrinsically benign forms of age discrimination will also not be discussed by this thesis, though the question of positive age discrimination is addressed in relation to cultural ageism in the next chapter.

Chapter Three: The nature and combat of cultural ageism

Having outlined the taxonomy of age discrimination this chapter goes on to develop some of the ideas integral to the category of cultural ageism. Included in this is a discussion about the dynamics that work between the two social constructs of cultural stereotypes and social groups. The notion that the old form a separate social group, and that there are cultural stereotypes that both identify the members of this group and describe the nature of those members, is integral to the definition of ageism. Moreover, there are some obvious parallels between cultural ageism, racism and sexism, that are not shared between these other oppressions and egalitarian ageism, and these are also examined in more detail.

By the end of the chapter I hope to have also explained why we can talk about ageism as an example of *cultural* oppression in its own right rather than merely being one aspect of *economic* or *political* oppression. I outline the way in which both the causes of cultural ageism and its effects work to both diminish the opportunities of the elderly to form, revise and pursue new conceptions of the good in their later years, and to consequently diminish the degree of self-respect that many of them can enjoy. I examine the inadequacies of much contemporary liberal philosophy when it comes to combating culturally oppressive ideologies like cultural ageism, and I will argue that contemporary liberal egalitarian theory ought to seek to establish a just cultural environment. To this end I defend a form of cultural combat, the advocacy strategy, that aims to challenge the cultural stereotypes that convey both negative moral and social judgements, and I argue that this strategy is compatible with mainstream liberal egalitarianism.

3.1 Cultural ageism as an oppressive ideology

Drawing on the discussion in chapter 2 (section 1) we can say that cultural ageism is based upon false judgements concerning the moral and social worth of older citizens, and for that reason it is intrinsically morally wrong. Moreover, cultural ageism is distinctive from racism or sexism in the sense that it is a cultural oppression of a synchronic period of a person's life, and its effects will involve the harming of certain fundamental synchronic interests of those persons rather than the harming of diachronic interests which is the consequence of racism and sexism. These harmful effects would then constitute an extrinsic wrongfulness. The phenomenon is cultural because it involves shared social meanings regarding old age and what it is to be old. And it is oppressive in its effects to the extent that these meanings are negative and work to restrict the opportunities open to older people, and to the extent that they infiltrate the conscious of older persons leading to a diminished level of self-respect and moral agency.

The concept of culture is rarely discussed within liberal theory except within the work of liberal multiculturalists, like Will Kymlicka, who argue that cultural membership provides a range of meaningful options for individuals to choose a valuable life plan.¹⁵² Multiculturalists argue that different cultures ought to be tolerated within liberal theory to the extent that they contribute positively to the formation of conceptions of the good life, and this involves discussions regarding how one culture,

¹⁵² Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Oxford University Press, 1989), p166.

that of the liberal host culture, can and should tolerate the existence of other cultures within it.

An alternative view of the concept of culture is taken by thinkers like Clifford Geertz who, instead of seeing it as a wide and meaningful range of life options from which to choose, view it instead as a form of restraint on the options available to individuals.¹⁵³

Geertz views culture as ‘a set of control mechanisms – plans, recipes, rules, instructions (what computer engineers call ‘programs’) – for the governing of behaviour.’¹⁵⁴ This more pessimistic view of the role of culture means that as individuals we do not come to know a good in isolation but against a background of values implicit in one’s culture. And, because we are what Andrew Kernohan calls ‘finite creatures’ with limits to our time and reflective capacity, we cannot adequately reflect upon all the values one acquires from one’s culture: we will simply accept many beliefs about value without reflecting on them.¹⁵⁵

From this perspective, therefore, a culture is a form of structure or a framework for the making of meaningful choices about how to live. Karen Warren has described this cultural conceptual framework as a set of basic beliefs, values, attitudes and assumptions which form a socially constructed lens through which we perceive ourselves and others.¹⁵⁶ The cultural lens of each individual is, in turn, affected by

¹⁵³ Clifford Geertz, ‘The Impact of the Concept of Culture on the Concept of Man,’ in *The Interpretation of Cultures* (New York: Basic Books, 1973).

¹⁵⁴ Ibid, p44.

¹⁵⁵ Andrew Kernohan, *Liberalism, Equality, and Cultural Oppression* (Cambridge: Cambridge University Press, 1998).

¹⁵⁶ Karen J. Warren, ‘The Power and Promise of Ecological Feminism,’ *Environmental Ethics* 12 (1990): 125-146.

such features of their lives as gender, race, class, age, affectional orientation, nationality, and religious background. That is to say that the lens is conditioned by one's social and economic position within that culture. As a result of this conditioning some conceptual frameworks are oppressive in the sense that they justify and maintain relationships of domination and subordination between different classes, races, genders, and even age groups.

However, oppression comes in several forms. Personal oppression, on the one hand involves a relationship between two individuals in which one person oppresses the other, and there is an obviously responsible agent. Social oppression, on the other hand, involves numerous members of a society being engaged in a set of actions that collectively oppress other members of that society over time, and there is no one determinate agent responsible. The social oppression itself also takes a number of forms including economic, political, and cultural, and it is the latter that involves the cultural formation of negative attitudes about the worth of others or oneself, with corresponding beliefs about the naturalness of social and moral inequality.

It is a contestable issue as to which social form of oppression might be fundamental and whether it is the economic, political or cultural forms that sustains the others, but Kymlicka for one acknowledges that at least some forms of cultural oppression would continue to exist even within a politically and economically egalitarian society:

Liberals tend to believe that cultural oppression cannot survive under conditions of civil freedom and material equality. But there may be some false and pernicious cultural representations that are invulnerable to social criticism.¹⁵⁷

¹⁵⁷ Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Clarendon Press, 1990), p257.

The example of 'false and pernicious representations' discussed by Kymlicka is that of pornographic images of women which would continue to oppress women even within conditions of economic equality. And it is surely plausible that if a widespread moral bias existed in the form of a culturally oppressive ideology then even if those we despise have no more or less economic power than we do we would continue to despise them.

We should therefore view culture in the way Kernohan describes it, as 'the totality of socially transmitted beliefs, meanings, values, ideas, norms and institutions that form the background of our lives',¹⁵⁸ and we should understand cultural oppression as the social transmission of false ethical beliefs regarding the worth of others, or attitudes that convey social meanings which support such false beliefs, and the harmful actions these beliefs motivate in others. As Susan Sherwin notes, these beliefs often become 'so well established that they have been internalized by both those who suffer under them, and those who benefit from them; they remain invisible to many of the people most directly involved.'¹⁵⁹

Naturally an oppressive culture involves relations of power, but a sexist culture does not have power itself, rather it allows men to have power over women. Similarly, an ageist culture allows the young and middle-aged to have power over the old and to make decisions that discriminate against them. Culturally oppressive judgements regarding the supposed inferiority of women or the old often seem natural and even just, and it thus seems fair to many in society today that we should discriminate

¹⁵⁸ Ibid, p48.

¹⁵⁹ Susan Sherwin, *No Longer Patient: Feminist Ethics and Health Care* (Philadelphia: Temple University Press, 1992), p14.

against the old in the distribution of and access to healthcare. Thus, although cultural oppression is devoid of determinate agency it nevertheless makes the members of one group vulnerable to the power of another.

I said at the beginning of this section that cultural oppression harmed both the self-respect of persons and their moral agency. It harms moral agency because it affects not only the outcome of people's choices but the very process of deliberative choice itself. Culturally oppressive judgements, usually in the shape of stereotypes, are internalised by both victims and oppressors and they inhibit the agency of the former as a consequence. Cultural oppression is therefore a form of power that conditions the beliefs of both oppressors and victims and socializes some individuals into accepting a subordinate status, and almost everyone into thinking that this is natural. An obvious example of this is the fact that although the subjection of women in Western society existed for generations (perhaps forever) that fact was not recognised until recently. As J.S. Mill pointed out a century and a half ago the condition of subjection was deemed to be natural.¹⁶⁰

As a consequence of its inhibiting influence upon agency cultural oppression diminishes the ability of persons to rationally form, revise and pursue conceptions of the good, an ability that is widely accepted as one of the highest attributes of persons.¹⁶¹ Therefore, individuals who are oppressed in this way will tend to choose less rewarding conceptions of the good than they might otherwise had their cognitive

¹⁶⁰ J. S. Mill, *The Subjection of Women* (1869).

¹⁶¹ John Rawls, *A Theory of Justice* Revised Edition (Oxford: Oxford University Press, 1999), p505.

deliberation not been infiltrated by oppressive cultural judgments regarding their moral and social worth.

The damage to, or restricted development of, the conceptions of the good that are chosen by the culturally oppressed is closely related to the level of respect that its victims perceive that they hold within their community, and the level of self-respect that they have. Therefore, self-respect, which is fundamental to the well-being of a person, and which Rawls believes to be the most important of the primary social goods, will also be diminished by the phenomenon of cultural oppression. As Rawls points out 'our self-respect normally depends upon the respect of others. Unless we feel our endeavours are honoured it is difficult or impossible to maintain the conviction that our endeavours are worth advancing.'¹⁶²

There are therefore several harms associated with cultural oppression: it makes other forms of oppression seem natural; it interferes with the interest that individuals have in coming to know what is best for them; and it will have the tendency to diminish the level of self-respect that victims enjoy. Moreover, the negative moral and social judgements that constitute cultural oppression are ideological in the sense that they are a set of beliefs or values that systematically explain the position of the social group, and justify that group's subordinate status.¹⁶³ Ageist stereotypes make up part of this ideology that systematically devalues the moral and social worth of elders. It is systematic in the sense that immoral discrimination against the elderly takes place on

¹⁶² Ibid, p178.

¹⁶³ Jon Elster, 'Sour Grapes: Studies in the Subversion of Rationality,' (Cambridge: Cambridge University Press, 1983), p141. See also Anthony Giddens, *Sociology* (Cambridge: Polity Press, 1989), p727; and Bill Bytheway, *Ageism* (Oxford: Oxford University Press, 1995), p116.

a societal scale through social institutions and practices as well as between individuals, and it systematically produces oppressive social relations between younger and older citizens.

3.2 Cultural ageism and political philosophy

Hilde Lindeman Nelson notes that there are few accounts of cultural oppression within political philosophy.¹⁶⁴ However, in the few discussions of the concept that do exist very little is ever said about ageism. When the term is used it often appears that the author uses it merely as part of a strategy to give more weight to the point they are making, and they add the term 'ageism' to a long list of other reasonably plausible and recognizable forms of oppression.¹⁶⁵ Three brief examples will elicit the point.

Firstly, in his rejection of cultural oppression Kernohan extends John Rawls' theory of the moral equality of persons and the idea that natural endowments of talents are undeserved. He notes that the distribution of natural talents is just as 'arbitrary from a moral point of view' as the assertion of birthright in an aristocratic society. Kernohan then argues that 'other natural characteristics of persons such as skin, colour, sex, age, disabilities, ethnic background, and sexual orientation are similar factors for which people can not be held responsible'.¹⁶⁶ This would seem to imply that treating

¹⁶⁴ Hilde Lindeman Nelson, *Damaged Identities, Narrative Repair* (New York: Cornell University Press, 2001), p108.

¹⁶⁵ Kernohan, *Liberalism, Equality, and Cultural Oppression*, 53; Nelson, *Damaged Identities, Narrative Repair* p16; Iris Marion Young, *Justice and the Politics of Difference* (Princeton, New Jersey: Princeton University Press, 1990), pp44, 54, 127.

¹⁶⁶ Kernohan, *Liberalism, Equality, and Cultural Oppression* p52. Rawls himself briefly mentions racial discrimination on p19 of *A Theory of Justice*, and race, sex and cultural background on p99.

someone's highest order interests differently on the grounds of age would be arbitrary from a moral point of view. But we have already seen that this is not necessarily the case, and those that advocate age discrimination on the basis of diachronic equality justify treating someone's interests differently on the grounds of age precisely because it is not morally arbitrary to do so. It thus remains to be explained by Kernohan why age should be included in his list of morally arbitrary sources of discrimination.

A second thinker who uncritically lists ageism amongst several other forms of oppression is Iris Marion Young, who examines what she calls the 'faces of oppression'.¹⁶⁷ Young conceptualizes oppression in cultural terms, and describes its five faces as exploitation, marginalization, powerlessness, cultural imperialism, and violence. The five faces function as criteria for determining whether individuals are oppressed rather than as a full theory of oppression, and different group oppressions exhibit different combinations of these forms. Her discussion of its application to the old is both brief and vague, though, and she merely asserts that '[o]ld people are oppressed by marginalization and cultural imperialism, and [that] this is also true of physically and mentally disabled people'.¹⁶⁸ The concept of marginalization involves a category of people that are expelled from useful participation in social life, and potentially subjected to material deprivation. However, this rather vague explanation of marginalized groups includes the following:

old people, and increasingly people who are not very old but get laid off from their jobs and cannot find new work; young people, especially Black and Latino, who cannot find first or second jobs; many single mothers and their children; other people

¹⁶⁷ Young, *Justice and the Politics of Difference*, chapter 2.

¹⁶⁸ *Ibid*, p64.

involuntary unemployed; many mentally and physically handicapped people; American Indians, especially those on reservations.¹⁶⁹

One feels tempted to ask whether any conceivable group that is popularly associated with discrimination has been or could have been left out of this conception by Young. Young then discusses what she calls the 'scaling of bodies', and she claims that members of oppressed groups are locked inside their objectified bodies. The 'normalizing gaze' of science focuses on 'the objectified bodies of women, Blacks, Jews, homosexuals, old people, the mad and feeble-minded', and '[f]rom its observations emerged theories of sexual, racial, age, mental or moral superiority'.¹⁷⁰ Again, one wonders what possible help such a broad, general and vague understanding of the ideas of marginalization and objectification can provide us with.

What Young does is to start by developing a concept of cultural oppression and then assume that there is only one form of ageism, which must be culturally oppressive along with every other kind of discrimination. This I believe is a mistake. Rather than trying to make particular patterns of discrimination fit an already constructed theory of cultural oppression one should instead begin the process of theorizing by examining the particular form of discrimination itself, and then compare it with the dynamics of other discriminations. If we do this for ageism we find that not all wrongful discrimination against the old is in fact culturally oppressive. Indeed, to assume that every form of age discrimination is culturally oppressive is to weaken the position of anti-ageists, because it is possible for others to point to alternative motivational reasons for such discrimination.

¹⁶⁹ Ibid, p54.

A third philosopher who has briefly alluded to ageism in her work is Hilde Nelson who believes that the systems of beliefs that people hold are closely related to the social construction of their identities, and she describes as 'doxastic damage' the distorting and poisoning of people's self-conceptions caused by negative cultural beliefs. Her theory relates to the idea of a narrative ethics, and the construction of selves through master narratives of which cultural stereotypes are an important part. Nelson identifies some of the currents at work in oppressive power relations between social groups and defines them as; expulsive, pressive, preservative, and dismissive. She then gives a very brief example of how these currents relate to popular ideas about the old by saying that 'ageism pushes the elderly out on the margins of social life but doesn't, for the most part, insist on killing them'.¹⁷¹

What this very brief survey of the few inclusions of the concept of cultural ageism within political philosophy shows is that although the concept is not seriously analyzed, its actual existence as an oppressive ideology is something that is assumed. Very little time or effort, however, is given to either explain what is actually meant by 'ageism' in these contexts or how it relates to other forms of oppression such as sexism, racism, classism, or disableism, if indeed it does at all. Ageism is a form of cultural oppression that these authors expect most of their readers to instantly recognise, even if they have only a vague understanding of what constitutes ageism, and even though that vague understanding is little helped by the philosophers themselves who include that concept within their theories. It would seem that the only reason that references to ageism are included within these discussions of oppression is to intellectually bludgeon readers into accepting the theory of oppression presented,

¹⁷⁰ Ibid, p127.

rather the hope of gaining any real understanding of the concept of ageism itself or of any other form of oppression on their lists.

3.3 Cultural ageism and the elderly as a social group

A fundamental issue that arises from any definition of ageism is the degree to which stereotypes and social groups play a part in the concept. Lesser's second and third 'kinds of ageism' seem implicitly to involve some dynamic between social groups and stereotyping in the sense that individuals are attributed characteristics which either only some members of the social group have, or in fact none of them have.¹⁷² It seems that every culture has had a conception of old age and what it means to be old, but the meanings of those concepts, whether negative or positive, have varied widely.¹⁷³ Now, although these phenomena are closely related, so closely in the case of ageism in fact that one would not exist without the other, I will nevertheless examine them separately. The question for this section then is whether the elderly actually do exist as a social group sufficiently distinct from race and gender.

Firstly, then, how do we determine whether or not the old do in fact constitute a social group? Gordon Streib has argued that there are plausible grounds for thinking of the aged as a minority social group and that its individual members are attributed a subordinate social status.¹⁷⁴ He claims that:

¹⁷¹ Nelson, *Damaged Identities, Narrative Repair*, p140.

¹⁷² Harry Lesser, 'Ageism,' *Encyclopedia of Applied Ethics, Volume 1* (Academic Press, 1998), p87.

¹⁷³ Nancy Foner, *Age in Conflict: A cross cultural perspective on inequality between old and young* (New York: Columbia Press, 1984).

¹⁷⁴ Gordon F. Streib, 'Are the Aged a Minority Group?' in B. Neugarten (ed.), *Middle Age and Aging* (Chicago, Il: Chicago University Press, 1965).

In many respects the aged show characteristics of a minority group. They are subject to categorical discrimination, they have relatively high visibility, and, in many parts of our society they constitute a functioning subgroup. Stereotypes are held about the group, and individuals are judged thereby. Prejudice is not uncommon, especially in industry,.... Thus, the ingredients necessary to the development of minority group status are present for the aged. The characteristics commonly attributed to minority groups as a result of such categorization may be expected to develop among older persons.¹⁷⁵

Streib alludes to a number of subjective and objective characteristics here that, if shared by most members of a social category, would mean that they constituted a social group, and we shall now examine them each in turn. Firstly, there is the idea that members of the group have a 'relatively high visibility'; that they possess certain identifiable characteristics that would mark them out as members of the elderly. In other groups like blacks, Asians, and women, the identifiable characteristics are often fairly obvious. But as ageing is a gradual process many people will look older than they are while others look younger, and it is not obvious when an individual ceases to be middle-aged and becomes old. It is thus not possible to determine when a person joins the elderly social group simply by looking at him. Nevertheless, ageing is a visible characteristic and people in society will generally be able to agree when someone looks 'old'. In any case, other groups, like Jews, are not always readily 'visible' but that does not prevent negative cultural stereotypes to motivate very damaging discrimination against them.

Secondly, the identifiable characteristic that marks someone as a member of a social group at the same time conveys a particular social status upon that individual, whether positive or negative. There is, to say the least, an absence of special marks of privilege

¹⁷⁵ Ibid, p157.

attached to aging in the 'West' which are found in other cultures.¹⁷⁶ Western society generally associates the old with obsolescence, decline, and death, and stereotypes abound regarding their low social status as at best an irrelevance and at worst a burden that is parasitic to society. These negative images of the old exist independently from race, gender, or class, though the conditions of older individuals may tend to be exacerbated by these further social categorizations.

A third characteristic of a social group is that there will often be relations of dominance and submission with regard to other groups in society, and the status characteristic tends to lead to differentiated access to power, privileges and rights. As Gordon Streib argues, the idea that the elderly are under-privileged is the principle reason that many commentators have identified the elderly as a minority group.¹⁷⁷ But it is not true to say that civil rights are legally denied to the elderly, and, despite the fact that a large number of the old are poor, the proportion of the economic, political and social elite who are also old is quite high. Moreover, those who are needy in old age will often have been needy for most of their lives, which suggests a connection with class, and there is likely to be a high concentration of elderly poor amongst racial minorities. This might suggest that ageism is at best a subset of other more obvious forms of oppression. But there is also no institutional segregation of the old from the young. Fewer than 5% of the old live in care or residential homes, and although old individuals may live alone they are not ghettoized in the way that people marked by

¹⁷⁶ John A. Vincent, *Inequality and Old Age* (London: UCL Press, 1995). See chapter three for a discussion of how being old differs between societies, and how in some societies the old enjoy great privilege in virtue of their age while in others old age confers an inferior status.

¹⁷⁷ Streib, *Are the Aged a Minority Group?* p38.

class and race are. Of course, women, are not ghettoized in a physical sense either and yet they too are often marked out as a culturally oppressed social group.

A fourth characteristic of social groups is that their members usually have some degree of group consciousness, a way of identifying fellow members and recognising that they have a common cause with them. While the social category of blacks has a shared history that may plausibly exclude other racial groups, the aged as a social category has no independent past or history of its own that is not linked to other age groups. Individuals within a birth cohort do have a shared history but that history has passed through the earlier age groups with that cohort. Although there has always been an old age group its individual members are not only just passing through it, but those individual members pass through it at different times. At one temporal moment two individuals might be in different age groups, one old (70) the other middle-aged (55), but at another moment, the two may both be considered old while their ages remain the same number of years apart, and when one is very old (85) and the other old (70). Thus the group's members are not permanent or exclusive in the way that many other social groups are, and although a person becomes a permanent member of the 'elderly' age group once she has attained a certain age (because she will only leave that age group with her death), membership is not exclusive in any way because almost everyone will eventually have had a turn to be old. There is, therefore, likely to be significantly less collective identification with one's age group than with other social groups where membership *is* exclusive and permanent, or at least chosen. Moreover, because of the biological weakness of the connectedness old people have with one another they will also often have stronger attachments to younger people within their family than they do with many other old people.

Unsurprisingly, therefore, there is little empirical evidence to show that people identify with their age group in the same way that they might with their class, or ethnic background, or sexual orientation. Indeed, there is in fact much evidence to suggest that although older people acknowledge the existence of the 'old' as a social group they nevertheless *dissociate* themselves from that group in a way that members of other social groups do not.¹⁷⁸ Minichello shows that whatever their age many older people often deny that they are 'old', 'elderly', or 'aged', because these terms denote negative cultural meanings. I believe the fact that older people do not deny the existence of an elderly social group, but then vehemently deny their own membership of it despite their age, illustrates the social power of the assumed existence of certain groups in the collective imagination.

This question of whether the group consciousness among the elderly is either strong or weak is an important aspect to the debate over generational equity, and the degree to which the elderly do shape public spending in ways that benefit themselves to the detriment of younger citizens. If there was a weak group consciousness amongst the elderly then this would seem to be reflected in what John Vincent et. al. have identified as their lack of readiness to organise as a cohesive political pressure

¹⁷⁸ V. Minichello, J. Browne, & H. Kendig, 'Perceptions and Consequences of Ageism,' *Ageing and Society* 12 (2000): 253-278. This tendency has, however, been challenged by Arnold M. Rose, 'The Subculture of the Aging: A Topic for Sociological Research,' in B. Neugarten (ed.) *Middle Age and Aging*.

group.¹⁷⁹ This would also suggest that the concerns that motivate commentators like Van Parijs to suggest ways of disenfranchising the elderly are unfounded.¹⁸⁰

A fifth characteristic that is often thought to be a precondition to the existence of a social group is that there be an identifiable subculture of which the members of the group are a part. This characteristic is obviously closely related to the previous issue of a collective identity because the existence of a definitive subculture that members recognise would strengthen collective identity. But it is also possible that although the old share a subculture they do not recognise the fact and so do not recognise that they do in fact have a collective interest around which they should unite.

One writer that incorporates the notion of a shared subculture within her understanding of what constitutes a social group is Iris Young, and her definition of that concept is ‘a collective of persons differentiated from at least one other group by cultural forms, practices or way of life’.¹⁸¹ What this suggests, as Brian Barry forcefully points out, is that her definition ‘makes the possession of a distinctive culture *the* feature that defines somebody as a member of any social group’.¹⁸² But although Young includes the ‘old’ as an example of a social group she says nothing about what an aged subculture might look like. Barry dismisses this characteristic of social groups altogether and claims that ‘[o]ld people are defined by age, not by

¹⁷⁹ John A. Vincent, Guy Patterson & Karen Wale, *Politics and Old Age: Older Citizens and Political Processes in Britain* (Aldershot: Ashgate Publishing Limited, 2001).

¹⁸⁰ Phillippe van Parijs, ‘The Disenfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice,’ *Philosophy and Public Affairs* 27 (1999): 292-333.

¹⁸¹ Young, *Justice and the Politics of Difference*, p43 (see also p186).

¹⁸² Brian Barry, *Culture and Equality* (Cambridge: Polity Press, 2001), p306. Emphasis added.

sharing some 'old people's culture'.¹⁸³ But it is not just the aged for whom Barry believes a subculture is irrelevant when defining them as a group, and he argues that membership of the disabled group is in virtue of a physical condition rather than a cultural trait, and while there may be a 'gay lifestyle' only some gay and lesbian people choose to adopt it.¹⁸⁴

Barry does acknowledge that 'there is an irresistible case for making discrimination based on age illegal', but believes that if this happened most of the cases brought would not be for indirect discrimination based on some cultural attribute distinctive to those over some age.¹⁸⁵ It should be noted that Barry is dismissive of the whole idea that social groups with conflicting interests actually exist within society, but if he believes anti-ageist legislation is required then this suggests that he also acknowledges that the old are identified in some way, otherwise they would not be discriminated against. Thus, we do not need to believe that the old share any kind of subculture in order to acknowledge the existence of ageism and the adverse influence it has on the interests of older persons.

However, although we may agree that a shared culture is not a necessary characteristic of a social group, there have nevertheless been attempts to defend the idea that the old do participate in a subculture.¹⁸⁶ Arnold Rose, for example, believes that a subculture can be expected to develop within any category of the population

¹⁸³ Ibid, p96.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Rose, 'The Subculture of the Aging: A Topic for Sociological Research.'

when its members interact with each other more than they do with persons of other categories. Such insular interaction occurs under two possible sets of circumstances, both of which he believes pertain to most older people in Western society. The first circumstance is that the members have a positive affinity for one another on some basis, and secondly, that members are to a significant degree excluded from interaction with the members of other social groups. And the greater the segregation of older people from other age groups the greater the likelihood of a development of a subculture amongst them. What that subculture actually looks like is left as an open question by Rose for further research. However, from what we've already said in this section it would seem that at least one of the preconditions for the development of a subculture (i.e. that old people have a positive affinity for one another) is not usually fulfilled. And I would argue that society ought to avoid the appearance of the second precondition (i.e. segregation) in order to ensure an inclusive society. Older persons do not as a rule have a greater affinity with each other than they do with younger people. And, although the old may very often be excluded from a wider inter-age-group interaction the reasons for that are that the old face problems like the lack of mobility, limited resources, and widespread cultural prejudice: it is not because they are officially excluded from certain civil and political rights. However, it is van Parijs' suggestion that these very exclusions *should* be introduced as a way of overcoming what is often perceived as too great an identification of older people with the selfish interests of their age group. But van Parijs' proposals would in fact *create* the very precondition that Rose identifies as necessary for that greater collective affinity to develop.¹⁸⁷

¹⁸⁷ Rose himself implies that any subculture of the aged would be confined to the poorer, less well educated elderly, because the greater connectedness the individual has with the wider society through interaction with younger people, or through mass media, and continued employment, the less likely the old are to identify with their age group rather than with other social groups and social issues.

Indeed, because the probable consequence of such discrimination would increase the 'visibility' and identification of older individuals we may have a strong reason for challenging Van Parijs' suggested disenfranchisement of the elderly. Firstly, such discrimination against elderly people would make them more readily identifiable because their chronological age would officially determine their differentiated civil and political rights. Secondly their status as citizens would be markedly diminished in that they would no longer enjoy equal civil and political rights. The readiness of individuals to organise as an identifiable and politically coherent pressure group has always been related to the realisation that their group characteristics deny them equal access to power, and if we disenfranchise the elderly the same trend is likely to happen. It is therefore possible that no measure would actually do more to bring about intergenerational conflict than one of Van Parij's suggested policies for avoiding it.¹⁸⁸

I would argue, therefore, that the elderly are easily identifiable as such, and that their physical characteristics of age denote a subordinate status in modern society. Nevertheless, their membership as a social group is not exclusive, they have little or no sense of group consciousness, and they are not defined by any shared culture that is separate in some way from wider society. However, social groups are social constructs and it may in fact not be necessary for us to prove that the 'elderly' exist as a social group in any objective sense, provided enough people *assume* that they do. It is just this subjective criteria that leads us to the sixth and final characteristic which Streib identifies as a feature of social groups; 'that stereotypes are held about the

¹⁸⁸ Such explicit and direct discrimination would also seem to give official legitimacy to the negative social stereotypes that imply the elderly are more selfish than other age groups.

group, and individuals are judged thereby.’¹⁸⁹ Such stereotypes both identify the individual members of the group and provide norms of response to those individuals. Stereotypes will convey judgements concerning the moral and social worth of such persons and these judgements, if we accept them, will condition our responses to those individuals. Therefore, as I argue in section 3.5, if a large enough web of cultural stereotypes abound within society then the individuals they purport to identify and describe can for all intents and purposes be assumed to constitute a social group. Before doing so, however, I first want to examine why it might be self-defeating for anti-ageists to portray the old as constituting an identifiable social group.

3.4 Why anti-ageists should not portray the old as a social group

A fundamental feature of social groups is that the individuals who are thought to constitute them are in some way considered to be different from the rest of us, and that suggests a ‘them’ and ‘us’ dichotomy with some distance between the two groups. This distance and difference between the old and other members of society is precisely what cultural ageism presupposes, and the negative stereotypes that abound within society seek to describe the nature of that difference by conveying judgements of the lesser moral and social worth concerning the elderly. If, as anti-ageists, we were to simply champion the interests of the ‘old’ over the ‘young’ we would reinforce the idea that older people constituted a separate social group with interests that conflicted with their younger compatriots. We would be confirming the claims of those engaged in the ‘generational equity’ debate who represent this supposed conflict between the ‘old’ and the ‘young’ in relation to the distribution of available resources.

¹⁸⁹ Streib, ‘Are the Aged a Minority Group?’ p157.

The anti-ageist concern to refute the claims of groups like Americans for Generational Equity (AGE) that older people are inherently selfish, and the need to challenge the negative assumptions about the elderly that are implicit within 'disengagement theory', suggests that anti-ageists should decry the idea that the old constitute a separate social group.¹⁹⁰

However, while we should refute the idea that older people constitute a social group it is not obvious that a liberal anti-ageist ethic would require us to abandon all distinctions of the kind that are usually made, between young, middle-aged, and old, however unclear those boundaries are.¹⁹¹ Such social categorisation does not in itself seem to be a moral problem, even when it involves differential treatment in public policy. What is important is that the categorisation is not motivated by negative cultural stereotypes and that the policies that use these classifications do not neglect the fundamental synchronic interests of the old. Indeed we can refer to the 'elderly' as a social category in order to direct public policy in an efficient way, insofar as it helps to provide statistics that would, for example, correlate the demand for certain drugs among older people with the supply of sufficient funds to the NHS to purchase those drugs. In short, the use of social categorizations does not thereby imply the existence of a social group, and it does not premise a 'them' and 'us' dichotomy. Society needs to ensure an inclusive culture rather than one that emphasizes difference, and we

¹⁹⁰ Anti-ageists would commonly deny 'difference' between the old and young because they wish to refute any justification of different treatment that is likely to be to the detriment of the old. However, difference theorists like Young might actively seek to encourage the development of a group consciousness amongst the old as a way of asserting their interests in society.

¹⁹¹ We can, for example, make an analogy between the process of ageing and the process of education. They both are never ending processes. However, although education is a process we nevertheless tend to categorise individuals into different groups on the basis of their level of educational development and achievement: ill/well educated; literate; urbane; etc. in the same way we can classify individuals as presently existing at different stages of chronological development.

should ensure that the social relations between those perceived as old and young are equal.

3.5 Cultural ageism and the role of stereotypes

It is conceivable that the negative moral and social judgements that some people hold about others could be idiosyncratic in the sense that the discriminator simply decides upon these negative judgements for themselves, but as I noted in the taxonomy, these are likely to be rare and not a concern for social justice. Normally, as David Wasserman notes, ‘individuals do not regard groups as morally inferior on a random basis’, but rather the ‘contempt for and devaluation of the members of a group is informed by a social and institutional structure that consigns the [members of a] group to a particular ‘place’ and endows its members with particular attributes.’¹⁹²

As noted above, the ways in which we act towards people and objects within society are largely guided by social norms, and stereotypes represent powerful examples of these norms. What stereotypes do is incorporate an aspect of an assumed identity of certain individuals, creating a cultural image of them which then conveys stories about their characters. Stereotypes themselves involve at least two moral norms, norms of identity and norms of response. The norms of identity presuppose the existence of a particular social group, and describe the characteristics, behavioural traits, and social and moral worth of the individual members of that group. Moreover, such norms allow us to identify particular individuals as members of that group. The

¹⁹² David Wasserman, ‘Discrimination: Concept of,’ in *Encyclopedia of Applied Ethics, Volume 1* (Academic Press, 1998), p810.

norms of response then provide non-group members with a range of attitudes and actions in regard to those social group members which are normally deemed to be culturally appropriate.

Once someone is identifiable as a member of the 'elderly' then this social fact may be taken as a proxy trait for other features of her personality that imply a lack of social worth, i.e. that she has old fashioned ideas about morality, that she is less adaptable and slower to learn, that she is 'out of touch' with the contemporary social world, that she plays no part in economic productivity, or that she uses her electoral vote solely to ensure that a high percentage of the national product continues to be spent on her age group. Cultural images of the old may also convey judgements of negative moral worth, and these would imply that old people do not share the same moral rights as younger people, and that younger persons do not have the same moral duties towards the old as they do towards other young people.

Once the norms of identity of a particular stereotype have created the cultural image of a social group, and they have identified the defining characteristics and the worth of members, as well as the proxy traits that will identify particular individuals as its members, the norms of response then guide our attitudes and actions towards these individual members. It is within the norms of response that the activity of discrimination is justified, and 'wrongful' discrimination often takes place as a consequence of the existence of unreflected prejudices and moral bias based upon inaccurate or irrational negative stereotypes. For the elderly, if the norms of identity have identified members as generally embodying negative social worth because they are judged obsolete then it justifies discrimination against them in the rationing of

access to healthcare and of recruiting or training older workers. If the norms of identity define the elderly as embodying negative moral worth, then the norms of response might permit more directly harmful attitudes and actions.

The cultural images and mental pictures that stereotypes create concerning certain kinds of people can hold our imaginations captive because those same stereotypes normalize and naturalize our assumptions of their differential worth. In this way stereotypes become part of what Margaret Walker has called the ‘epistemic firewall’.¹⁹³ The epistemic firewall confines the way we normally perceive the condition of others. Negative assumptions seem natural because they are so widely held, and the harms they cause individuals are not recognised because they have been normalised. Because stereotypes keep our imaginations captive in this way we do not always reflect upon their accuracy and legitimacy. The very nature of cultural oppression, therefore, is that the prejudices people hold are thought not to be prejudices. People are often socialized into holding the prejudices they do, and those prejudices are often assumed and unreflectively endorsed by persons as being ‘natural’. Moreover, as I have argued above, in addition to categorizing people by their socially ascribed group membership, and determining how others should treat them, these norms of identity and response may come to be accepted as natural and just *even by those discriminated against*. Thus, as Grimley Evans has noted, ‘[a]geist prejudice is deeply and widely pervasive in British society’, and ‘[i]t is treated as in some way ‘natural’, even by many older people.’¹⁹⁴

¹⁹³ Margaret Urban Walker, *Moral Understandings: A Feminist Study in Ethics* (Rowan & Littlefield Publishers, Inc, 1998), p173.

¹⁹⁴ Grimley Evans, ‘Age Discrimination: Implications of the Ageing Process,’ in Sandra Fredman & Sarah Spencer (eds.) *Age as an Equality Issue* (Oxford and Portland, Oregon: Hart Publishing, 2003), p20.

Older individuals will perceive that they are categorized by society at large as members of a particular social group about which there exist derogatory stereotypes, and because these stereotypes seem natural they may accept and use them to structure their own conduct and preferences and conceptions of the good. As social beings we partly construct our own identities from the cultural meanings around us, and so internalized cultural stereotypes that identify people as embodying lesser moral or social worth may result in those people become self-abnegating. Once the old have internalized the negative stereotypes, and accepted their inferior status, they are likely to become less assertive and are in danger of not being able to fulfil their synchronic interests in having as good a life as possible.

Therefore, although there is significant interdependence between the concepts of social groups and stereotypes, I believe that at least as far as cultural ageism is concerned, negative stereotypes are fundamental in the sense that they exist before cultural oppression can take place. Stereotypes identify the elderly as a social group, they determine the features that designate individuals as members of that group, and they determine the way those individuals will be treated. The idea that the 'elderly' might constitute a social group would not therefore have meaning without the prior existence of cultural stereotypes. Of course this is not necessarily true for all social groups, and the membership of those groups that are based upon religion or ethnicity will often be subjectively defined by the individual members themselves. But this is not the case for the 'elderly'. There would be no point supposing the existence of a social group unless there were stories to tell about its members, and if the supposed members do not identify themselves as such then stereotypes will often do the job

instead. Thus, we can define stereotypes as popular stories and plotlines that can be told about individuals who share certain characteristics, and which describe the nature, character, behaviour, patterns of thinking, and the social and moral worth of such individuals. At the same time they prescribe ways in which 'we', the rest of us, should react to individuals embodied within that description. And negative cultural stereotypes are therefore a fundamental cause of cultural ageism rather than merely a manifestation of it.

We should at this point make a couple of qualifications to this critique of stereotypes. Firstly, stereotypes do not need to be negative. One example of a positive rather than negative stereotype concerning older people is what can be loosely described as 'sagism'. It is the generalised idea that older people are wiser than younger ones because they have been around for longer and seen more of life. Again, though, this may of course be true of some older people, but by no means is it applicable to all. People are usually thought wise if they have had many and varied experiences from which they have learnt a great deal about life. But individuals may have lived a long life precisely because they have successfully avoided much life experience, and have thus avoided many of the corresponding risks. There are old fools just as there are wise youngsters. Moreover, this positive stereotype does not carry much weight in a society of rapid technological change where the wisdom of older generations is widely thought to be outdated and irrelevant to modern living. Nevertheless, it would not be morally wrong for people to act on the positive stereotype of sagism if it does not form part of an oppressive ideology, and does not adversely affect the interests of others to any significant extent.

Secondly, generally speaking not all negative stereotypes need be irrational or wrongful. It is perhaps a stereotype that most convicted thieves are likely to steal again, and that they have less social worth as a result because they are less likely to play a supportive role in a cooperative society. Naturally, while this may be true of many convicted thieves it is not true of all, and there are many ex-criminals who find it difficult to 'go straight' in the face of adverse discrimination. Nevertheless, it cannot be said to be morally wrong to hold that particular stereotype because it is based upon the past actions of the individuals themselves. Ageist stereotypes are not like this.

3.6 Why Cultural ageism is not economic or political oppression

Understanding the negative cultural stereotypes as a cause of cultural ageism rather than as a manifestation explains two further features about this form of oppression. Firstly, it explains why we describe this oppression as *cultural* rather than economic or political, and secondly, it suggests a way of challenging cultural ageism. This second issue will be examined in section 3.9, but I will discuss the first issue here.

Whether an individual is subject to cultural oppression depends upon two things. Firstly, whether or not she can be defined by others as a representative of a social group, and secondly, whether there is an extensive web of negative stereotypes regarding members of that particular social group. The degree to which members of a particular social group are culturally oppressed would depend upon the number of negative stories that can be told about them. If we return to the example of red-headed males in chapter 2, and we imagine a social policy that required categorisation by hair

colour, we would have to say that it is a category about whose members there are few stories to tell. As we have said, the only story that can really be told about red-headed men is that they are sometimes thought to be relatively more hot-tempered than the average man, but this is hardly a sufficient cultural identity to oppress an individual male who happens to have red hair. While there is no obvious way of determining exactly how many negative stories are necessary in order to define a group as culturally oppressed, it must obviously involve a plurality of such stories, and there is just such a plurality of stories regarding the old.

A critic of the view put forward here might say that people are primarily marginalised through economic forces, and that negative cultural stereotypes develop as explanations and justifications of that economic marginalisation. Thus, blacks are stereotyped as lazy and intellectually slow *because* they are relatively predominant among the poor, and members of the 'lower' social classes are stereotyped as less dynamic and motivated *because* they are poor. This view would claim that cultural stereotypes are merely a manifestation of the oppression rather than its essential cause, and any action taken to reform our culture and challenge cultural stereotypes could only ever tackle a symptom of the oppression rather than its root source. And the reason for this would be that the supposed real source of the oppression, i.e. economic domination, would be left unchallenged by cultural reform. The oppression would thus continue.

In many situations there may well be significant overlap between the effects of economic domination and cultural oppression, and there is little doubt that the force of negative cultural stereotypes will be strongest against those individuals who are

economically marginalised, while those older people who remain economically active and who are well-off will not be subject to them to the same extent. Nevertheless, as I have argued above, it seems to me that in regard to older persons, ageist cultural stereotypes do form a cultural identity and that this is the source of a unique form of oppression. It is because negative stereotypes create cultural ageism that we can describe it as a form of cultural oppression rather than economic or political oppression,

3.7 Is it appropriate to base ageism on models of sexism and racism?

Another important question that arises from any understanding of ageism is whether it is appropriate to base it on the models of 'racism' and 'sexism', and again, diametrically opposed positions have been taken on this issue. On the one hand, as we have seen, Butler views ageism as analogous to those other models because he sees it as 'a process of systematic stereotyping and discrimination against people because they are old, just as racism and sexism accomplish this for skin colour and gender'.¹⁹⁵ Bytheway and Johnson on the other hand try to distance ageism from other 'isms' and to emphasise instead its uniqueness as a form of oppression in its own right.¹⁹⁶ This section argues that what is unique about ageism is the dual dimension between its cultural and egalitarian forms, and that each dimension has at least one common feature with both racism and sexism which they do not share with one another.

¹⁹⁵ Robert N. Butler, 'Ageism,' in *The Encyclopedia of Aging* (New York: Springer Publishing Company), p22.

¹⁹⁶ Bill Bytheway & Julia Johnson, 'On Defining Ageism,' *Critical Social Policy* 27 (1990): 27-39, p33.

However, we should start by examining why we cannot simply agree with Butler and model ageism on racism and sexism.

Many anti-ageists like John Grimley Evans claim that '[A]geism is ... as great an affront to the supposed values of our society as sexism or racism.'¹⁹⁷ Nevertheless, many people would not find this claim intuitively compelling because it is not generally thought that ageism leads to the same kind of violence against the elderly that perhaps racist ideas often do against ethnic minorities. Moreover, to model ageism on racism and sexism is to assume that racism and sexism are themselves largely similar in nature, but this too has been challenged. Ann Dummett argues that the analogy between racism and sexism breaks down as soon as we examine their respective consequences for the victims.¹⁹⁸ She claims that sexism maintains women in a subordinate social position to men, but that 'racism denies the right of certain people to be alive.'¹⁹⁹ Therefore, the 'difference between sexism and racism is not one of degree, but kind'.²⁰⁰ If Dummett is right then we should understand racism as denying the intrinsic moral worth of members of certain racial groups while sexism merely questions the instrumental social worth of women. Both are forms of cultural oppression but there is a qualitative difference between them. And if sexism is so different from racism then perhaps ageism is very different from both.

¹⁹⁷ John Grimley Evans, 'Age Discrimination: Implications of the Ageing Process,' p20.

¹⁹⁸ Ann Dummett, 'Racism and Sexism: A False Analogy,' in James Rachels (ed.), *Moral Problems* (Harper Row: New York, 1979): p45.

¹⁹⁹ Ibid, p39.

²⁰⁰ Ibid, p40.

However, I believe this is too simplistic a view of the differences between racism and sexism, and Dummett is wrong on two counts. Firstly, not all racism implies that members of a certain race have no right to life; and secondly, some sexism does deny that right to life. In fact, both sexism and ageism may involve the active killing of women or old people. In certain sexist cultures infant girls may be left to die or be actually killed because they incur greater long term expense and fewer returns for the parents than boys. The fact that they are killed is precisely because they are female and because prevailing cultural meanings ascribe females less worth than males. Similarly, while certain forms of egalitarian ageism legitimate the denial of life saving resources or even the termination of life, cultural ageism, as we saw in chapter one, will legitimate bad treatment, violence and even killing in the minds of the discriminator. Thus, while ageism is not wholly similar to racism and sexism, neither is it wholly unlike them.

The argument that ageism is unique originates in the simple fact that we are all going to be old one day, while we are not all going to be black or female. Therefore, as we have said above, ageism has a dimension that other forms of oppression do not possess, and this fact is thought by some to explain what is wrong with racism and sexism and what is intrinsically benign about age-discrimination. Bill Bytheway puts the point thus:

The unique character of ageism in later life can be best conveyed by evoking the ideas of worlds in which each over the course of a full lifetime slowly and consistently change from white to black, or from male to female; and conversely of worlds in which blacks and women have statistical life expectations of no more than 15 years. It is in this way that social responses to the ageing process and old people differ radically from those of gender and women and race and ethnic groups.²⁰¹

²⁰¹ Bytheway & Johnson, 'On Defining Ageism,' p33.

Thus, it may be thought intuitively plausible that in some cases it is perfectly just, or at least 'less unjust', to discriminate on the basis of age, especially when resources are limited, because the period within one's life when we are discriminated against will be compensated for at another period of our lives with a greater access to benefits. This may even make it rational for people to accept a society in which discrimination on the basis of age alone is prevalent, and the synchronic quality of the discrimination (as opposed to the diachronic quality of racism and sexism) in some way militates against the seriousness and harms that age discrimination causes its victims.

However, if it is this synchronic quality that makes ageism permissible we might ask whether racism and sexism would not continue to be unjust even if they too were synchronic and that, over the course of a full lifetime, people did slowly and consistently change from black to white or from women to men. Would a racist and sexist society cease to be unjust simply because racist and sexist views only discriminated against individuals for a part of their lives? Some egalitarians argue that such synchronic inequality is wrong irrespective of whether it is compensated for later on, because that inequality nevertheless involves a form of domination. Dennis McKerlie, for example, argues that even if people take turns to experience wealth and poverty, and so are as well off as each other over their complete lives, this does not detract from the wrongfulness of the inequality that exists between each of them at each temporal moment.²⁰² What we need in order to challenge this assumption is an appeal to the idea that social relations between persons should remain equal throughout their lives. If inequality is wrong, and it continues to exist through time, then the wrongfulness continues as well irrespective of the fact that first one and then

²⁰² Dennis McKerlie, 'Equality Between Age-Groups.'

another person has a turn to be well off.²⁰³ Thus, while there are aspects of the concept of ageism that are unique its effects may be no less unjust.

We therefore have some parallels between racism, sexism and ageism, and some important differences. However, I believe we can construct a model that helps make sense of these various similarities and differences, and to do this we can draw on the analysis of Lawrence Thomas.²⁰⁴ Thomas argues that there are two significant differences between racism and sexism, and this analysis in turn helps us to understand the differences between the two forms of ageism that I have identified. Thomas argues that: (a) sexism, unlike racism, readily lends itself to a morally unobjectionable description; and (b) the positive self-conception of men has been more centrally tied to their being sexists than has been the positive self-conception of whites to their being racists. And, as a consequence of these two features, sexist attitudes are that much more difficult to dislodge.²⁰⁵

The reason Thomas suggests that sexism is often thought to be unobjectionable is that there is a crucial difference concerning the relationship between discriminators and those discriminated against. Sexism might be described as unobjectionable to the extent that it does not involve malignant intent, and because it is based upon the

²⁰³ To illustrate this point McKerlie describes a marriage in which circumstances dictate that first the husband and then the wife take turns in being dominant and subordinate. This is far from a perfect marriage despite the fact that over its entire duration they each have an equal amount of dominance. Of course, in this sense an ageist society might have just as much inequality within it as a racist or sexist one, the only difference being that in a sexist/racist society two groups, men and women and blacks and whites, hold unequal positions for their entire lives, while in an ageist society the citizens took turns as in McKerlie's marriage example.

²⁰⁴ Lawrence Thomas, 'Sexism and Racism: Some Conceptual Differences,' *Ethics* 90 (January 1980): 239-250.

²⁰⁵ *Ibid*, p240.

traditional role of the man as benefactor and protector; that the man has a duty to protect and provide for his womenfolk. The relationship between racists and blacks does not give rise to any analogous role of beneficence, and Thomas argues, it is therefore very difficult to view racism in an unobjectionable light. Thus, sexism might be unobjectionable in this rather limited way, but ageism would seem to even more readily lend itself to a morally unobjectionable description. The problem for anti-ageists, as it is for anti-sexists, is that people must accept reasons for rejecting certain assumptions as unjust. And, as we have seen, the biggest problem for those that challenge egalitarian ageism, i.e. ageism defended on grounds of diachronic equality, is to explain why the idea of taking turns is wrong, and how it can be morally objectionable to discriminate against older people if all people are treated the same over a complete life and all end up with the same level of benefits over their complete lives. Egalitarian ageism thus lends itself to a morally unobjectionable description, though, as we have seen, this can be challenged as we have seen by appealing to the idea that social relations between persons should remain equal throughout their lives.

The source of Thomas' second claim is an argument concerning the self-conception of sexists and racists. Thomas argues that the positive self-conception of men has been more centrally tied to their being sexist than has been the case for the self-conception of racists being racists. The traditionally-minded male, perceiving it to be his duty to provide for and to protect his wife, would be incapable of enjoying self-esteem if he was unable to perform this duty. Blacks, on the other hand, are not thought to play any role in the self-conception of whites. Indeed, while the self-identity of a man predicates the existence of women, the identity of a white Englishman does not predicate the existence of blacks or Chinese. Thus, being sexist may be an integral

part of a man's identity, while being racist is unlikely to be integral to a white man's identity. Thomas claims that racist attitudes are consequently more readily eradicated than sexist ones.

In light of this insight the question for us here is whether ageists conceive of old people in a way that is closer to that of sexists or racists, i.e. is being ageist an integral part of a younger person's self-conception. Once again the difference between cultural and egalitarian ageism is fundamental, and I would argue that the latter does not construe old age in this way but that the former does. Indeed, we can see how some of the assumptions that constitute the cultural ageist ideology are arguably linked to the self-conception of younger people by examining the work of Iris Young²⁰⁶ and Julia Kristeva.²⁰⁷ As we said earlier, Young argues that the members of oppressed groups are locked into 'objectified bodies' that are perceived by society as ugly, and, rather than being viewed by others as individuals, older people are perceived only as old bodies. These bodies are objectified both by the 'normalizing gaze' of modern science which medicalizes old age, and by the ideal of respectability which requires the conforming of the body to norms that repress sexuality, bodily functions and emotional expression.²⁰⁸ Although ageist prejudice may not always be consciously verbalised it nevertheless continues to exist in the behaviour, images and attitudes of persons, and it often reveals itself within 'contexts of interaction – in the gestures, speech, tone of voice, movement and reaction to others'.²⁰⁹

²⁰⁶ Iris Marion Young, *Justice and the Politics of Difference*.

²⁰⁷ Julia Kristeva, *The Powers of Horror: An Essay in Abjection* (New York: Columbia University Press, 1982).

²⁰⁸ Young, *Justice and the Politics of Difference*, p135.

²⁰⁹ *Ibid*, p123. See also Arthur Brittan & Mary Maynard, *Sexism, Racism and Oppression* (Oxford: Blackwell Press, 1984): 6 – 13.

Kristeva's concept of abjection, which again is expressed in reactions of disgust, provides a way of understanding the interactive behaviour between members of an oppressed group and what Young calls the 'dominant culture', or in this case between old and younger individuals. Younger individuals often find the bodies of the old ugly and loathsome because they are associated in Western culture with decline, decay and death. In confronting old people one confronts what one will eventually become, and this engenders fear. The youthful subject may consequently develop a 'border anxiety' about her identity. She is faced with the knowledge that her identity will undergo a change that is culturally associated with decay and this often leads to a displacement of that fear in to a loathing of the older bodies of others. Such fear and loathing may motivate violence against old persons because younger people wish to maintain a distance between their own current identity and that of their future, older self. Old age is perceived as a disease, and the old as 'not fully human', and they are perceived in this way as a defensive device to maintain that distance. The development of a 'them' and 'us' relationship between those who perceive themselves as young and those whom they perceive to be old assists persons to maintain a distance between their current and future selves. Thus, cultural ageism, like sexism and unlike racism, may indeed be centrally tied to the self conception of younger people. The challenge for anti-ageists, as for anti-sexists, is the fact that people are disinclined to alter their behaviour if they have reason to believe that in doing so they would jeopardise their self-conception.

There are, therefore, some features that ageism shares with both racism and sexism, and some features that it shares with one and not the other, and some features it shares

with neither of them. What is significant about this analysis is that, because there are two very different categories of ageism, there is at least one feature that egalitarian ageism shares with sexism and does not share with cultural ageism, and there is at least one feature that cultural ageism shares with racism and does not share with egalitarian ageism. In short, the question as to whether we should model ageism *per se* on the models of racism and sexism is far more complex than most ageists and anti-ageists have often supposed. The various similarities and differences between cultural and egalitarian ageism on the one hand, and racism and sexism on the other are summarised below. Those features that are common to two discriminatory forms are indicated by their sharing a particular digit.

Cultural ageism	Sexism	Racism	Egalitarian ageism
2	1	2	1
3	3	4	4

Key

- 1 – The phenomenon readily lends itself to a morally unobjectionable description
- 2 – The phenomenon is unmistakably morally objectionable
- 3 – The phenomenon might be centrally tied to the self-conceptions of men/whites/younger persons
- 4 – The phenomenon is not tied to the self-conceptions of men/whites/younger persons

This analysis shows that ageism as a single concept might be at least as difficult as racism and sexism to dislodge. The reasons for this are that egalitarian ageism shares with sexism the notion that it can be readily described in morally unobjectionable terms, while at the same time cultural ageism shares with sexism the notion that the attitudes they involve are centrally tied to the self conceptions of those who hold them. No progress can therefore be made in challenging ageism without first acknowledging the complexity of the concept.

3.8 The culpability of cultural ageism

As I noted in section 3.1, unlike personal oppression, which involves one agent oppressing another, social oppression involves numerous agents oppressing numerous victims, often unconsciously and not necessarily with malice. There is thus no one agent responsible for the existence of culturally oppressive ideologies. For cultural ageism this oppression is motivated by a widespread acceptance of negative stereotypes regarding the moral and social worth of older persons. Although the stereotypes themselves are factually wrong, and individuals are wrong when they accept them, no-one is individually culpable for their existence or morally culpable unless they act on them in a way that harms the interests of others. I am wrong to believe that old people have less intrinsic worth, even if I refrain from acting on those beliefs, because there is no rational reason to suppose a person's age detracts from her moral equality any more so than if she were Jewish. But, because Kernohan is right that humans are finite beings with limits to their reflective capacity, and because stereotypes become part of an 'epistemic firewall' as Walker suggests, it is a moot point as to the level of responsibility any of us has for contributing to culturally oppressive relations.

One practice worth discussing here, as an example of the contentious nature of culpability, is the issue of reaction qualifications (RQs). Alan Wertheimer defines RQs as 'those abilities or characteristics which contribute to job effectiveness by

causing or serving as the basis of the appropriate reactions in recipients. Technical qualifications refer to all other qualifications.²¹⁰ Thus, in addition to the technical qualifications that employers look for in job seekers they also look for reactive qualifications, which is to say, how prospective employees will be perceived by both the public and other employees especially where interpersonal skills will be necessary. These reactive qualifications readily utilise cultural stereotypes and employers may not employ older workers if they believe the public might perceive those employees as ‘passed it’ or ‘over the hill’.

It is tempting to conclude that the morality of individual employers who consider RQs when making recruitment decisions follows straightforwardly from the morality of the negative moral and social judgements on which the reactions are based. Indeed, by not employing someone whom an employer expects customers to have a negative reaction to she also indirectly reinforces those negative judgements. This would be so even if her decision were motivated purely by instrumental rationality, i.e. that she will do more business with the prejudiced persons in the community if they do not have to come face to face with people they despise. Nevertheless, Larry Alexander’s tentative conclusion is that the morality of one’s treatment of RQs is not primarily a function of the intrinsic morality or immorality of the reactions.²¹¹ And the extent to which those that participate in cultural oppression are culpable is a function of their own reflective abilities.

²¹⁰ Alan Wertheimer, ‘Jobs, Qualifications, and Preferences,’ *Ethics* 94 (1983): 99-112, p100.

²¹¹ Larry Alexander, ‘What Makes Wrongful Discrimination Wrongful? Biases, Preferences, Stereotypes, and Proxies,’ *University of Pennsylvania Law Review* 141 (1992): 149-219, p176.

Thus, no-one is individually culpable for the existence of culturally oppressive stereotypes, and it is uncertain what level of responsibility individuals have for accepting them as true and being motivated by them to act in ways that harm the fundamental synchronic interests of the old. What society has a responsibility for, however, is the combat of cultural ageism, along with the false negative stereotypes that both create and sustain it.

3.9 Challenging cultural ageism

We said in section 3.2 that, because negative stereotypes were the primary feature of cultural ageism, it is these that must be effectively challenged if cultural ageism is to be eradicated. The question for us here in this section, therefore, is how we are to go about challenging the stereotypes that exist in our culture. The first subsection examines the issue of positive discrimination while the second and third develop the concepts of cultural combat and the advocacy strategy, and in my discussion of the latter I largely follow the thinking of Andrew Kernohan.

(i) Positive age discrimination

The issue of positive discrimination is one that is usually associated with employment practices, and while in the context of race and gender the practice remains a contentious issue for political morality the complexity of the issues that surround positive ageism make it more contentious still. The reason for this is that if we take turns in being discriminated against at different points in our lives then individuals will be treated equally over the course of their complete lives. Moreover, any negative

age discrimination against the old might equally be portrayed as positive discrimination in favour of the young and/or the middle-aged. This is evident if we think of the four social contexts discussed in chapter 1. For example, discrimination against the old in healthcare may be seen as a form of positive discrimination in favour of the young, which aims to ensure equal opportunities for all to reach a fair innings of life. In the context of income support the aim may be to restrict benefits to the old in pursuit of generational equity between them and the young, and as far as the distribution of voting rights is concerned policy might need to positively discriminate in favour of youth (by weighting electoral strength towards them) in order to ensure its political influence is not overwhelmed by the interests of age. Only in the field of employment practices does age discrimination not readily suggest positive discrimination in favour of the young, and we may speculate that this is because the discrimination in that context is more often motivated by culturally oppressive ageism as opposed to ideas about diachronic equality of benefits or opportunity.

An examination of the concept of positive discrimination points to further differences between ageism on the one hand and racism and sexism on the other. If we examine the issues of race and gender within employment, we see that the case for positive discrimination begins with the acknowledgement that women and blacks are statistically less well paid than white men, and are proportionately fewer among higher status jobs. These empirically verifiable statistics represent the widespread culturally oppressive prejudice against blacks and women within society. This prejudice, in turn, may be based on either conscious or unconscious moral bias, and from negative judgements of either moral or social worth. Thus, the aim of favourable discrimination for black women and against white men is to correct the inequality that

has traditionally existed between the complete lives of these separate individuals and to narrow the gap between their respective employment opportunities.

However, there are two separate issues involved with this goal where normally there is only assumed to be one. And the distinction we can make between them explains why analysis of positive age discrimination is so contentious. Firstly, then, there is the issue of moral bias that exists within society against both blacks and women, and the corresponding normative goal that this be eradicated. Secondly, there is the issue of a lack of equality of opportunity between the lives of black women and white men and the corresponding normative ideal that this should be corrected. It may be unproblematic for these two issues to be conflated within positive discrimination for race and gender because the issue of moral bias is generally accepted to be the source of the issue of a lack of equality of opportunity.

	Issues	Normative ideals
1. (Cause)	Racism and sexism are a manifestation of a widespread moral bias that exists against blacks and women.	That this moral bias be eradicated.
2. (Effect)	Racism and sexism manifest themselves as a lack of diachronic equality of opportunity.	That blacks and women enjoy equal opportunities with white men over their complete lives.

The two issues thus represent a cause and effect. If we can achieve the former normative ideal then the second ideal would seem to be readily obtainable. However, the divided nature of ageism presented in this thesis, between cultural and egalitarian sources, means that the cause and effect associated with racism and sexism can be

separated within the issue of ageism. Both moral bias and a desire for diachronic equality can be causes of wrongful age discrimination. Thus the relationship of issues and normative ideals would look somewhat different for ageism.

	Issues	Normative ideals
1. (Cause)	Cultural ageism is a manifestation of a widespread moral bias that exists against old people.	That this moral bias be eradicated.
2. (Cause)	Egalitarian ageism manifests itself as a consequence of the normative view that there should be diachronic equality between separate complete lives.	That the fundamental synchronic interests of persons be protected.

There are two arguments for positive discrimination: a forward-thinking view concerning beneficial consequences and a backward-looking view concerning compensation of past wrongs. Both views are motivated by a principle of equal concern for the interests of persons. The backward-looking defence views positive discrimination as a convenient means of compensating people who have been systematically denied equal opportunities in the past. Of course the problem for this view is that the actual people who are favoured are not necessarily those individuals who have been discriminated against in the past, and those who are positively discriminated against now may not be those who have benefited from traditional prejudice in the past. The problem is further complicated for the question of age because those who would benefit from current positive age discrimination have not been old before. Nevertheless, the traditional discrimination against blacks in particular often means that they have not had an equal opportunity to acquire the same qualifications as whites, perhaps as a result of less well-educated parents and second

rate schooling. Thus, Boxill argues that by applying positive discrimination in favour of blacks within recruitment practices for jobs and university places (by using quotas for example) we might compensate them for being denied those equal chances, and as a result competition in the job market would be fairer.²¹²

The forward-looking, consequentialist view of positive discrimination aims to make opportunities more equal by breaking the hold of cultural stereotypes. L.W. Sumner defends this view, and although he acknowledges that positive discrimination in favour of blacks and women will violate the right to equality of opportunity for white men he nevertheless claims this is necessary for the sake of eradicating long-term injustice.²¹³ Positive discrimination is therefore the lesser of two evils, and Sumner argues that there is an important difference between the impact of the two forms of positive and negative discrimination. When 'women are discriminated against the message they receive, whether overtly or covertly, is that they are inferior to men',²¹⁴ while a program of positive discrimination 'is premised not on a myth of male inferiority, but on the necessity of giving women a competitive advantage so that they can achieve real equality [of opportunity]'.²¹⁵ Thus, as Boxill and Sumner claim, the principle of equality of opportunity must be framed so as to serve the principle of equal concern for the like interests of all.

²¹² Bernard R. Boxill, 'Equality, discrimination and preferential treatment,' in Peter Singer (ed.) *A Companion to Ethics* (Oxford: Blackwells, 1997): 333-342, p336.

²¹³ L.W. Sumner, 'Positive Sexism,' in E.P. Paul *et al* (eds.), *Equal Opportunity* (Oxford: Blackwell, 1987).

²¹⁴ *Ibid*, p215.

²¹⁵ *Ibid*, p216. Here again we see within Sumner's defence of positive discrimination a conflation of the two issues of cultural oppression and equality of opportunity.

However, we might rephrase this claim to make it applicable to the assessment of the justness of age discrimination, and say that the principle of diachronic equality of opportunity must be constrained by an equal concern for the fundamental synchronic interests of each individual. By constraining diachronic equality in this way we can ensure that those temporal interests a person has in having their basic needs met, of maintaining autonomy over their lives, and of enjoying the social bases of self-respect, will prevent ageism harming those fundamental interests (whether that be understood as traditional negative discrimination against the old or as positive discrimination in favour of the young). Thus, rather than simply appealing to distributive equality, the only equality that anti-ageists should appeal to is a broader social ideal that seeks to create and sustain equal social relations between all citizens. The appeal of this social egalitarian ideal will be further examined in chapters 4 and 7 within the discussion of democratic equality.

However, by making the distinction between the two separate issues involved with positive discrimination in ageism, as opposed to racism/sexism, we might still make sense of an appeal to positive age-discrimination in the social context of employment. The normative goal within this context would be to combat cultural ageism and challenge the cultural stereotypes that portray the elderly as redundant. The reason this goal is pursued for race and gender is that by making blacks and women more 'visible' in high status, high paying jobs we are able to first counter the stereotypes that suggest these groups are unable to perform well in such jobs, and secondly, to provide role models to motivate younger blacks and women to aspire to such positions themselves. However, making old people more visible in this way would

seem absurd to many people as there is already a high proportion of older people in high status, highly paid jobs.

Nevertheless, it is not these highly paid jobs that are the real issue for cultural ageism. Rather, it is the fact that many middle aged and older workers find it difficult to be recruited or trained once they have been retrenched from their previous employment. We can return to the example of the retired steel worker used in chapter 2 (section 2) to illustrate this point. Bob, as we called him, was prevented from doing a job that he had a proven ability to do, and which would have given him gainful employment, on the basis of a negative cultural stereotype. However, as we have seen, such cultural oppression is incompatible with the requirements of the economy in general. If the government is trying to encourage employers to recruit older workers in order to maintain an efficient economy in the face of demographic change, then greater visibility of older workers being recruited in to new jobs may seem a contingently sensible policy. And positive discrimination would arguably further this aim.

However, age discrimination within employment might also be defended from a principled anti-ageist position, rather than one of mere contingency, if the aim is to equalise social relations between citizens rather than to pursue diachronic equality of opportunity. The former principle would give added weight to the requirement that we should eradicate ageist cultural stereotypes in a way that the latter principle is unable to do. The reason for this is that diachronic equality is not harmed if the old are discriminated against in employment and recruitment. Thus, while the issue of positive age discrimination is a complex one, it might be permissible both from an anti-ageist perspective as well as from the perspective of a principle of social equality.

(ii) Cultural combat and the advocacy strategy

I have argued that cultural ageism is morally wrong to the extent that it conditions the views people hold concerning the moral and social worth of older people in a false and negative way. It is also extrinsically wrong to the extent that it harms the fundamental synchronic interests of older people and that it results in the internalization of negative views by older people of themselves, which thereby engenders a form of self-abnegation within them. What justice requires, therefore, is that we actively challenge prejudice and stereotypes with the aim of creating and maintaining a culturally just environment, which is to say an environment free from practices that acculturate false derogatory beliefs about the worth of individuals.

Kernohan argues that liberals often think that state neutrality or state perfectionism are the only two possible strategies for combating the inegalitarian aspects of culture, and that we can only either adopt a liberal laissez faire strategy to cultural attitudes and practices or a state censorship strategy that is inherently illiberal. Egalitarian liberals like Rawls and Dworkin are pluralists regarding the conceptions of the good that people hold, and believe that political authority should be neutral between competing conceptions of what makes life worth living. Advocates of the laissez faire strategy would argue that under conditions of equal basic liberties and material equality the inegalitarian oppressive aspects of culture would disappear in a marketplace of cultural ideas. The principle of state neutrality requires that no-one should be excluded from influencing the shared cultural environment, and that sexist, racist and ageist views should be discredited in open debate between rational individuals. But because these liberals tend to see the only alternative to the laissez

faire strategy as that of censorship they do not think we can interfere directly with culturally oppressive attitudes and prejudices to any great extent.

As we have said, the role of culture as far as most liberals are concerned is merely as a network of ideas that represent a range of options from which individuals can choose a rational plan of life, and a way of providing meaning and significance to those available options. There is an assumption, therefore, that individuals can use their deliberative powers to arrive at their beliefs about value, which is to suppose that we are able to choose the beliefs that we hold. But the fact that people may become socialized in to believing something that is against their highest order interests in living as good a life as possible means that it is not always the case that we can decide what to believe. This issue of the degree to which a person is 'situated' within her culture, and so inextricably linked to it, drawing her values and modes of thinking from it, has been the cause of a thorny debate between liberals and communitarians over the last couple of decades. In contrast to the liberal multiculturalists' view Kernohan argues that a 'culture is less like a range of options offered for people's choice and more like a mechanism for controlling them',²¹⁶ which is a view that has also been acknowledged by Dworkin.²¹⁷ Liberals will say that it is possible for people to avoid adopting the prevailing social norms, but while this might be possible for some people the question seems to turn on how universal that capability is.

The problem is that our culture provides us with both the range of explicit ends that we may choose from as well as the background beliefs on which we judge those

²¹⁶ Kernohan, *Liberalism, Equality, and Cultural Oppression*, p23.

²¹⁷ Ronald Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985), p237.

explicit ends. These background beliefs seem so natural that we do not readily question them, and we only really examine them when they are called in to question by social movements like those of anti-racism, anti-sexism, and anti-ageism. It is therefore not always possible (if at all) to choose to believe something, because to believe something is to believe it is true, and not merely because we choose to believe it. As Bernard Williams argues, it is not possible to believe at will otherwise a person could come to acquire a belief whether or not it were true, and what is more she would know that she could acquire it whether or not it was true.²¹⁸ Thus, Kernohan argues that;

we are finite creatures, and the amount of critical reflection we can carry out puts boundaries on our reflection. Many, if not most, of the beliefs that enter into our deliberations have simply been uncritically adopted from our culture. Our culture not only suggests beliefs to us for consideration but also provides the background beliefs on which our deliberation depends.²¹⁹

Kernohan therefore believes that we should reject the liberal 'voluntarist' view of culture; that it merely proposes a selection of options from which we can choose. Moreover, Kernohan argues that the truly pernicious aspect of this model is 'its complicity in hiding the power that culture exercises over us'.²²⁰ This is because it wrongly implies that the process of belief formation and enculturation is in the control of the individual herself who can then take full responsibility for it. In fact what people do is to deliberate and reflect on their beliefs about ethics and the way they should lead their lives on the basis of two things: firstly, their background beliefs; and secondly the evidence laid before them.

²¹⁸ Bernard Williams, 'Deciding to Believe,' in *Problems of the Self* (Cambridge: Cambridge University Press, 1973), p148.

²¹⁹ Kernohan, *Liberalism, Equality, and Cultural Oppression*, p21.

²²⁰ *Ibid*, p24.

However, the only alternative to the *laissez faire* strategy that most liberals view as a possible challenge to the cultural attitudes we find obnoxious is that of censorship. One advocate of the censorship strategy is Catherine Mackinnon who calls for censorship against pornography on the basis that it is a form of cultural oppression.²²¹ Mackinnon argues that although the *laissez-faire* strategy might be an adequate theory if practiced within a non-hierarchical society, it is in fact ineffectual in a society where a gender inequality already exists. Mackinnon's censorship strategy would coercively regulate the expressive activities of individuals that contribute to an oppressive cultural environment, and Ronald Dworkin is right when he suggests that coercing an individual to follow a certain conception of the good does not make her believe in the truth of that conception, nor does it make her life go better by following it.²²² The reason that coercion does not make one's life go better is that a person can not be forced to endorse that conception of the good, indeed it is more likely to turn someone against it.

Nevertheless, we do not have to think that these two strategies are the only options. A third strategy, and one that Kernohan claims is a better interpretation of egalitarian liberalism than unqualified state neutrality, is what he calls the advocacy strategy. The advocacy state, unlike the neutral state, can challenge inequalitarian cultural practices and beliefs actively and publicly, and engage in cultural reform, but would not interfere coercively with personal expression and would leave the final evaluation of ideas to individuals themselves. We noted above that there were two aspects to the

²²¹ Catherine Mackinnon, *Only Words* (Cambridge: Harvard University Press, 1993).

²²² Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press, 2000), chapter 3.

deliberation of people when they reflect on their values; their background beliefs and the evidence before them. The second feature ensures that understanding culture as a pervasive and controlling power does not rule out the possibility of cultural reform, and cultural change can take place as we become more aware of evidence that tells us something about the lives of others. The more we are able to identify with members of other groups in society as human beings similar to us, and the more we can view the world from their perspective, the more we can relate to their interests. It is this ability to identify with others that has allowed the successful challenging of other cultural oppressions like racism and sexism, through the challenging of cultural stereotypes. And, as we saw in chapter One, anti-discriminatory legislation has been able to give culture a significant move in the right direction.

Thus, the advocacy strategy would not coercively intervene against any particular expressive acts because it recognises that the chain of causality between act and harm is vague and purely speculative. Therefore, as we said before, I am wrong if I accept culturally oppressive moral and social judgements about people, but I am only morally culpable if I act on those judgements to the detriment of the interests of others. However, even if empirical sociological data could show that members of certain groups think their own projects are less valuable, or that their self-respect was lower, it would nevertheless be very difficult to trace a connection between these false beliefs and the particular expressive acts or socially prejudiced attitudes of others. An advocacy strategy therefore seeks to persuade rather than coerce individuals through the economic, educational and ideological power of the state, so it would for example provide active financial support for associations and groups striving to combat inegalitarian cultural prejudices.

One group that seeks to combat a form of cultural oppression is Age Concern. The 'Millenium Debate of the Age', which was coordinated by Age Concern, published a report that criticised many of the principle bases on which it is often thought permissible to discriminate against older people.²²³ Among its recommendations are the following: firstly, the state should introduce citizenship classes in schools which have, as part of their curriculum, the positive aim of demystifying ageing and old age; secondly, the state should support programmes specifically aimed at fostering meaningful contact between members of different generations; thirdly, the state should be guided by the principle of age-neutrality which denies that it is legitimate to discriminate against a person on the basis of age in any policy area.²²⁴

By adopting these policies the liberal state would be adopting an advocacy strategy towards the challenge of cultural ageism. And if the government was serious about the third suggested policy then it would have good reason to extend the coverage of legal protection of older people beyond the employment sector to the distribution of goods and services. In this way it would emulate the comprehensive single equality legislation of the Irish Republic. It might also go further and extend the current anti-discriminatory legislation to embrace a positive duty, arguably found within the Northern Ireland Act of 1998, to promote equality of opportunity for older people rather than simply a negative duty to not discriminate against them.

²²³ Age Concern England, *The Millenium Papers: Values and Attitudes in an Ageing Society* (London, Age Concern England, 1999).

²²⁴ *Ibid*, p45.

(iii) Is the advocacy strategy compatible with mainstream liberal theories?

Kernohan claims that the theories of several contemporary liberal philosophers would be fully compatible with the advocacy strategy he defends, and I will outline this compatibility with reference to Ronald Dworkin, perhaps the leading liberal egalitarian thinker today. However, one important point to note is that Kernohan's theory of cultural oppression only incorporates judgements of *moral* inferiority, while I have argued that the phenomenon actually includes judgements of *social* inferiority as well. For this reason, while Dworkin's philosophy might well incorporate the advocacy strategy as far as unequal moral status is concerned (that the state should not ban but should argue against such a view) it is less certain that it would advocate such a strategy where inaccurate judgements of negative social worth are concerned. On the other hand, there seems no obvious reason why it should not if, as I have argued, inaccurate stereotypes that convey judgements of negative social worth constitute a feature of the same culturally oppressive ideology as that of negative moral judgements. If people are inaccurately classified as being of less instrumental worth to society than others, merely on the basis of their chronological age, and are discriminated against on that basis, then it seems to me to be morally wrong for essentially the same reasons as negative moral judgements.

How, then, is the advocacy strategy compatible with mainstream political philosophy?

Cultural oppression involves acculturating individuals into false beliefs about value, their own and that of other people. For this reason phenomena like cultural ageism represent an unjust restriction on the liberty of the citizens of a community, and it can therefore be thought of as a form of coercion. Historically liberalism has sought to

liberate individuals from the coercive power of the church and state and more recently, with the advent of liberal egalitarianism, from the coercive power of economic forces within capitalism. However, as the following quote from John Stuart Mill reveals, these are not the only sources of coercive power that we must challenge.

Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things which it ought not to meddle, it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating more deeply into the details of life, and enslaving the soul itself. Protection, therefore against the tyranny of the magistrate is not enough.²²⁵

How do we ensure that we are not oppressed by culture? What should we identify as our interests? And what is necessary for us to be free from this form of oppression? Ronald Dworkin tackles this problem and defends what he calls the ‘endorsement constraint’.²²⁶ Dworkin argues that the value of someone’s life comes from her life being a skilful response to the challenges facing her, rather than from the impact her life has on the world. Thus, as Will Kymlicka puts it, ‘my life only goes better when I am living it from the inside, according to my beliefs about value’.²²⁷ On this *constitutive* view someone’s endorsement of a component of the good life is a necessary condition for that component to increase the good in her life, and therefore, ‘no component may even so much as contribute to the value of a person’s life without his endorsement’.²²⁸ This argument harks back to a principle that has its origins in John Locke’s *A Letter Concerning Toleration*, and the insight that forcing a person to

²²⁵ John Stuart Mill, *On Liberty*, in John Gray and G. W. Smith (eds.), *J.S. Mill – ‘On Liberty’ in Focus* (London: Routledge, 1991), p26.

²²⁶ Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (London, England: Harvard University Press, 2000), Chapter 6.

²²⁷ Kymlicka, *Contemporary Political Philosophy*, p203-4.

²²⁸ Dworkin, *Sovereign Virtue*, p248.

worship, to go to church and to pray to a God they do not believe in can not make their life go better. If a person does not endorse theism as a constitutive feature of what makes life worth living then it is self-defeating to coerce her to worship.

The 'endorsement' constraint therefore requires that a person consciously endorses the beliefs, values, goals and preferences they have in order for them to count as valid constituents in a good life. However, someone who has been culturally oppressed, and who has internalized negative social and moral judgements regarding her own worth and that of others, may nevertheless endorse those judgements. The fact that cultural stereotypes often appear natural and normal encourages us to accept them without reflection. In response to this problem Dworkin realises that '[w]e must distinguish acceptable from unacceptable circumstances of endorsement', and though this is a difficult distinction, any person's endorsement would not be genuine if it involved a 'change that lessened his ability to consider the critical merits of the change in a critical way'.²²⁹ Therefore, it is morally important that we have the capacity to consider the cultural merits of different options in a reflective way.

Kernohan asks a rhetorical question: 'Why is critical reflection so important?' His answer is that it is important because we have an interest in having true beliefs about the good, and critical reflection is important because it allows us to get our beliefs right. But what if some agent beneficially brainwashed us and induced true beliefs about what is valuable in our lives? Would our ability to critically reflect on values and beliefs continue to be so necessary? If our interest is only to have true beliefs then beneficial brainwashing would seem to be acceptable. Nevertheless, most liberals

²²⁹ Ibid, p218.

would argue that we have an interest not only in having true beliefs about the good but also in coming to have knowledge of the good, and to have arrived at that knowledge for ourselves. Critical reflection is important because it allows us to come to *know* our own good where to know something is to have a justified belief in its truth. To know something means that it should cohere with the other judgements we have and be justified by them. We can therefore summarize Kernohan's argument in the following six points.

1. I have an interest in knowing my own good, in believing and endorsing my ends.
2. Therefore, I also have an interest in having ends that are justified by my other beliefs in a coherent way.
3. Therefore, my ends must be revisable in the sense that they should respond to the reasons that justify them.
4. If one has an end that is fixed and resistant to change even when the reasons for which it was justified have changed (and so logically require that end to change), then that end would not be the product of reasons but of causes.
5. Therefore, benevolent brainwashing, which inserts true ends into a person's conception of the good still harms the person's interest in knowing her good. The consequences would be that even though her induced ends may now be true they are not justified on the basis of the other beliefs she has.
6. Therefore, critical reflection must aim not simply at true beliefs, but at justified true beliefs.

Therefore, not only is it morally important that we have true beliefs, but we must also know them to be true. Thus, Kernohan argues that in order to protect our interest in having the best life possible what we need is not just the endorsement constraint but also a 'knowledge constraint'.²³⁰ The latter not only implies the former but ensures that the process by which we come to that endorsement is autonomous. It is my

²³⁰ Kernohan, *Liberalism, Equality, and Cultural Oppression*, p33.

argument that this applies to not only questions of moral worth but of social worth as well.

Let us apply this thinking to the issue of cultural ageism. Imagine an older person has internalized culturally oppressive judgements concerning her negative social worth. To the extent that she unreflectively accepts a diachronic view concerning the meaning and value of life she will also endorse the popular belief that, now that her career and most of her long-term life plans have been completed, any substantive meaning that her life has is in the past. This view has infiltrated her consciousness and in that sense it is now coercing her to not recognise her true interests. Those true interests are to develop new meaning and value within the temporal stage of life in which she now finds herself. She has a synchronic interest in living as good a life as possible, and this is prevented by the internalized cultural belief that old age has no meaning, and moreover that it is normal and natural that it should have no meaning. Moreover, believing this cultural assessment of the value of her synchronic interests means that she will not expect and require society to ensure her the means to fulfil her real interests.

Now, even if she was to somehow be beneficially brainwashed in to recognising her true synchronic interests that belief would not be justified by her other beliefs concerning the meaning and value of old age. If she continued to believe that only the diachronic interests of persons are of fundamental importance then for her to also hold the belief (that had been induced in her) that she has synchronic interests in developing new meaning would not be coherent. She therefore not only has an interest in knowing her real synchronic interests, but she also has an interest in being able to

come to know those interests through an autonomous process. And, what justice requires in order for her to facilitate that autonomous process is the challenging of the cultural stereotypes which suggest that older people's lives are of less value.

3.10 Concluding remarks

We have said that in general cultural oppression is intrinsically morally wrong because it involves false judgements concerning the moral and social worth of certain persons, and it is extrinsically wrong because it diminishes the autonomy and self-respect of its victims as well as seeming to justify and legitimise other harms that prevent the satisfaction of their basic needs. Negative assumptions of worth are internalised by older individuals which engenders a lack of self-respect and a degree of self-abnegation, and this in turn diminishes the autonomy those individuals have in developing and pursuing a conception of the good. This chapter has both outlined the nature of cultural ageism and examined ways in which we might challenge it, and how we challenge it is dependent upon its nature.

Cultural oppression per se is a complex phenomenon, and one of the flaws with much of its analysis within political philosophy is that many thinkers have analysed the general concept rather than focussing upon the particular forms it takes within the context of sex, race, and age. My argument has been that we cannot adopt a 'one size fits all' analysis of cultural oppression, and that cultural ageism is not necessarily the same as other forms of this phenomenon. One such variable feature of cultural oppression is the degree to which the individuals affected by it identify with the social group discriminated against. I have argued that although older persons themselves

acknowledge the existence of a social group labelled 'the elderly', around which exist a number of negative meanings and valuations, they also seek to disassociate themselves from that group. Thus, older people do not define themselves as members of this social group but are objectively defined as such by others in their society. And because there is little or no self-identification of individuals with the 'old' as a social group we can say that, in contrast to other possible ethnic or religious social groups, the elderly is one that only really exists within the popular imagination and is created through a network of cultural stereotypes. Cultural ageism is thus unquestionably cultural in origin, regardless of any other political or economic consequences it might have.

The chapter has analysed the comparison often made between sexism, racism, and ageism, and found that the complexity of the concept of ageism means that each of its two distinct cultural and egalitarian forms have similarities with both racism and sexism that the two forms themselves do not share with each other. And, while cultural ageism shares with racism the fact that it is unmistakably morally objectionable, it may nevertheless be difficult to dislodge because it also shares with sexism the idea that the prejudice that supports it is centrally tied to the self-conception of those that discriminate. Ageist cultural stereotypes thus serve to reinforce the idea that the old represent a threat to the self-conception of younger persons. Therefore, to successfully challenge cultural ageism we need to challenge and combat the cultural stereotypes that sustain the existence of that social group in the popular imagination, rather than to simply seek economic redress. As we have seen cultural oppression in general may continue to exist within a materially egalitarian society, and this is particularly the case for cultural ageism.

Having analysed the nature of the phenomenon, the chapter then examined ways of challenging it. I have argued that the issue of positive discrimination as a form of challenge to ageism is complicated by the fact that the two issues of equal opportunity and of moral prejudice are separable within the context of ageism while they are not within racism and sexism. While positive discrimination is aimed at equalising the life opportunities of blacks and women as a consequence of challenging the prevailing negative cultural images many people have of them, this is not the case with ageism. For example, we might successfully challenge negative ageist stereotypes and yet continue to pursue policies that harm the synchronic interests of the old as egalitarian ageism does, or we might successfully equalise the benefits and opportunities that exist between people and yet continue to hold a moral bias against older persons. For this reason I have argued that positive discrimination is only relevant as a challenge to cultural ageism, and that it will probably be most effective as a way of challenging cultural ageism within the context of employment practices.

The discussion of the limitations of positive discrimination introduces the social ideal of equality. This ideal charges us to seek to create and sustain equal social relations between citizens rather than attempt to address the consequences of cultural ageism through egalitarian distributive policies. Indeed, as we will see in the following chapters, the pursuit of distributive equality may actually justify wrongful age discrimination. Positive age discrimination in the context of employment will further the social egalitarian ideal as well as serving to challenge the moral bias on which racism and sexism are similarly based.

The goal of social equality requires us to combat negative cultural assumptions, to show them to be false, and to strive to create and maintain a culturally just environment, and I have outlined three possible strategies for pursuing such cultural combat; that of censorship, laissez faire, and advocacy. While we must reject censorship as illiberal, the laissez faire policy of most liberals is arguably somewhat ineffective because, as we have said, individuals are 'finite beings' who are unable to critically reflect on all or even most of the cultural assumptions that their social conditioning provides them with. The advocacy strategy therefore seeks to overcome this lack of reflective ability by actively persuading people of the fallacy of cultural stereotypes through the economic, educational and ideological power of the liberal state. Only by challenging the ideology of cultural ageism and creating a culturally just social environment can we hope to allow individuals to autonomously come to recognise their own fundamental synchronic interests. The ideal of social equality is thus fundamental to the challenge of cultural ageism because it challenges its very cause. Distributional equality in this sense is largely irrelevant and at best would correct the symptoms. The next chapter begins with an analysis of these two egalitarian goals and goes on to argue that the social ideal is also the only one relevant to the challenge of egalitarian ageism as well.

Chapter Four: Ageism, equality and the CLV

The purpose of this chapter is to examine the phenomenon of what I have called ‘egalitarian ageism’, and its implicit justification within much contemporary egalitarian political philosophy. Many of those who advocate theories of equal distribution will implicitly assume the complete life view (CLV) because diachronic equality is their aim. Distributive equality is inherently comparative and the CLV claims that in questions of distribution we should compare the shares people enjoy over their complete lives rather than how well off they are at any particular time. My argument is that this principle implicitly justifies age discrimination and that this discrimination is morally wrong to the extent that it neglects the fundamental synchronic interests of the old. I argue that an alternative conception of social equality, or democratic equality (DE), not only prevents the need for such discrimination but would actually challenge it. And, for that reason, any anti-ageist principle ought to be embedded within such a theory. Democratic equality expounds a normative ideal of equal human relations, and therefore, the discrimination that would be implicitly justified by theories embodying the CLV would be deemed immoral by DE because such discrimination would necessarily involve relations of social inequality.

The chapter begins by addressing some of the fundamental questions facing egalitarians, and it argues that if we answer those questions in certain ways we are led to the justification of age discrimination. In this way I outline the phenomenon of egalitarian ageism and in particular how it is related to the currently dominant philosophical position sometimes referred to as luck egalitarianism.

4.1 Social equality or distributive equality?

The first and most fundamental question for egalitarians is whether society should pursue either social or distributive equality. David Miller distinguishes between these ‘two different kinds of valuable equality’, one of which he claims is connected with justice, the other standing independently of it.²³¹ Equality of the first kind is distributive in nature and specifies that benefits of a certain kind should be distributed equally, because this is what justice requires. Equality of the second kind does not directly specify any particular distribution of benefits, but instead identifies a ‘social ideal’ of ‘a society in which people regard and treat one another as equals.’²³² Such a society would not be marked by status divisions such that one can place different people in hierarchically ranked categories, and Miller calls this second kind of equality *equality of status* or simply *social equality*. One might argue that as egalitarians we should pursue both conceptions simultaneously, perhaps because one is just another expression of the other, but one of the main claims of this chapter is that these conceptions can in fact conflict at least when it comes to the treatment of older persons.

It is equality of the first kind that has been the focus of much contemporary liberal political philosophy over the last three decades since the publication of John Rawls’ *A Theory of Justice*.²³³ This focus represents a debate concerning various formulations of the concept of social justice, and one particularly dominant generic form of such

²³¹ David Miller, ‘Equality and Justice,’ in Andrew Mason (ed.) *Ideals of Equality* (Oxford: Blackwell Publishers, 1998): 21-36, p23.

²³² Ibid.

²³³ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

distributive liberal egalitarianism is that which has been dubbed by Elizabeth Anderson as 'luck egalitarianism' (LE).²³⁴ They are luck *egalitarians* because they argue for the equal distribution of benefits of one kind or another as a way of expressing 'fairness'. Justice involves the political community treating all persons with equal respect and concern, and it is thought fair within the *circumstances of justice* (i.e. the conditions of relative scarcity) that individuals have an equal share of a particular distriband, and that individuals can thereafter dispose of that equal share as they see fit. In this way individuals are assured autonomy from both other citizens and the state, and have an equal opportunity to pursue their particular conception of the good.

However, they are *luck egalitarians* because they also make a moral distinction between *brute* luck on the one hand, which relates to our unchosen circumstances, and *option* luck on the other which relates to personal choice. Although there are different versions of luck egalitarianism, including 'equality of resources',²³⁵ 'equal access to advantage',²³⁶ 'equal opportunity for welfare',²³⁷ 'equality of fortune',²³⁸ and others,²³⁹ the fundamental principle underlying each variant is a common conception of fairness. That conception requires that society should compensate individuals for

²³⁴ Elizabeth Anderson, 'What is the Point of Equality?' *Ethics* 109 (1999): 287-337.

²³⁵ Ronald Dworkin, 'What is Equality? Part Two: Equality of Resources,' *Philosophy and Public Affairs* 10 (1981): 283-345.

²³⁶ G.A. Cohen, 'On the Currency of Egalitarian Justice,' *Ethics* 99 (1989): 906-44.

²³⁷ Richard Arneson, 'Equality and Equal Opportunity for Welfare,' *Philosophical Studies* 56 (1989): 77-93.

²³⁸ Eric Rakowski, *Equal Justice* (New York: Oxford University Press, 1991).

²³⁹ John E. Roemer, *Theories of Distributive Justice* (Cambridge, Mass.: Harvard University Press, 1995).

disadvantages for which they are not responsible, but requires them to bear the full costs of the adverse consequences of their choices

A normative principle that each person has access to an equal initial share of benefits not only ensures equality of opportunity but it also requires that individuals are held personally responsible for the success of their lives, which is to say that they can be expected to carry the full cost of their individual choices. It seems legitimate to do this because each individual has had an equal opportunity to make their life a success. Moreover, to ensure that the outcomes of people's lives properly reflect their choices society would need to prevent the problem of free-riding. Free-riding involves individuals who are either lazy or who have squandered or unwisely invested their initial shares then claiming the benefits that others have created through their own industry and prudence. To allow free-riding is thus unfair because it reduces the shares (and so liberty) of others who have been responsible, but it also provides no incentive for people to be personally responsible for their behaviour if they know they will always be bailed out if necessary.

It can be argued that the principle of personal responsibility is valuable because it ensures that people can enjoy the lives that they choose. What gives individual choice value is that one can benefit from the good fortune that accrues from hard work, prudence or successful gambles, and redistribution of this would deny the harder working, prudent, and risk embracing amongst us of their particular conceptions of the good. Moreover, most contemporary liberals conceive themselves to be in some

part followers of Immanuel Kant, and it was one of his premises that to not hold individuals responsible for their free choices is to not respect them as moral agents.²⁴⁰

As G.A. Cohen points out, by giving a central role to the ideas of personal responsibility and choice in this way egalitarians can sidestep one of the most compelling criticisms of the anti-egalitarian right, i.e. the criticism that egalitarians wish to equalize the *outcomes* of persons irrespective of how much effort or personal responsibility they display.²⁴¹ The moral distinction between different forms of luck would enable us to develop a distributive scheme that is both ambition-sensitive and endowment-*insensitive*, and so the egalitarian project would be to equalize *opportunities* rather than outcome. Such a theory would therefore be compatible with quite wide disparities between wealth outcomes for individuals. We can generalise the fundamental idea underlying LE theory in what we can refer to as the LE maxim:

Justice requires that, as far as possible, a person should be compensated for disadvantages that derive from the features of her circumstances for which she is not responsible (brute luck), but that she should not be compensated at all for disadvantages that derive from her free choices (option luck).

Understood in this way LE has two immediate premises,

1. LE places significant weight on the cut between individual choice and unchosen circumstance.
2. LE treats equality as an essentially distributive ideal.

The fact that the choice/circumstance conception of fairness is taken as fundamental means that the LE position must be an essentially distributive ideal. These premises

²⁴⁰ Immanuel Kant, *Foundations of the Metaphysics of Morals*, Translated by Peter Heath. Edited by Peter Heath & J.B. Schneewind (Cambridge: Cambridge University Press, 1991).

²⁴¹ Cohen, 'On the Currency of Egalitarian Justice,' p933.

also mean that LE is committed to diachronic equality, and that provided that this requirement is respected then any amount of synchronic inequality would be tolerable. If people were compensated for disadvantages that were the consequence of a choice they made then some people would end up with more than an equal share over their complete life, which would mean any inequalities would no longer reflect the free choices of individuals.

This luck egalitarianism remains the dominant position within contemporary political philosophy, but, as Samuel Scheffler points out, a ‘project of critical examination’ of that philosophical position has been initiated by Anderson and others.²⁴² This project firstly questions the LE assumption that egalitarians should focus so extensively on the distribution of divisible goods because it argues that there is something else more fundamental to egalitarianism than simple distribution, i.e. the social relationships between citizens. The fact that distribution is not the only important, or even the most important element, of egalitarianism is recognised by Cohen when he acknowledges that ‘it seems quite unclear that a state which forthrightly refuses to pursue a norm of strict distributive equality *ipso facto* shows failure to treat its subjects with equal respect and concern’.²⁴³

Secondly, the critique of LE questions both the philosophical and moral plausibility of the distinction between choice and circumstance. As Anderson points out with her

²⁴² Samuel Scheffler, ‘What is Egalitarianism?’ *Philosophy and Public Affairs* 31(2003): 5-39, p7. The other papers that critique luck egalitarianism include; Jonathan Wolff, ‘Fairness, Respect, and the Egalitarian Ethos,’ *Philosophy and Public Affairs* 27 (1998): 97-122; Seana Valentine Shiffrin, ‘Paternalism, Unconscionability Doctrine, and Accommodation,’ *Philosophy and Public Affairs* 29 (2000): 205-50; Timothy Hinton, ‘Must Egalitarians Choose Between Fairness and Respect?’ *Philosophy and Public Affairs* 30 (2001): 72-87.

²⁴³ G.A. Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* (Cambridge: Harvard University Press, 2000), p165.

example of the deaf community, there are unchosen features of a person's circumstances that disadvantage them but for which they do not seek compensation. On the other hand, even if people are responsible for the disadvantageous circumstances they find themselves in, perhaps if they fail to insure themselves against an accident they later suffer, we would not normally accept that it was morally required to deprive them of the urgent medical intervention of which they are now in need. Finally the critical project claims that LE is not in the spirit of Rawlsian liberalism despite the widely held assumption that it is, and I will examine this claim more fully in chapter 6.²⁴⁴ We can summarise this list of objections to LE thus;

Objection 1: Distribution is not the only, or even most, important feature of egalitarianism.

Objection 2: The LE distinction between choice and circumstance is not always morally plausible.

Objection 3: The LE conception of fairness is not a refined version of Rawls' 'difference principle'.

But there are further objections that can be made. An alternative conception of *social* equality has been defended by Anderson and Andrew Levine as 'democratic equality', and by Timothy Hinton as 'equality of status'.²⁴⁵ Democratic egalitarianism (DE), as I shall also refer to this position, involves a normative egalitarian ideal of human relations and is primarily concerned to equalise the social relations that exist between citizens. I will henceforth use the terms DE and social equality interchangeably, although I acknowledge that the former may not be the only possible version of the

²⁴⁴ Will Kymlick, for example, claims that Dworkin's concern for the choice-circumstance distinction, and therefore his defence of LE, is an extension of Rawls' theory of justice. He argues that, although "one of Rawls' central intuitions ... concerns the distinction between choice and circumstance", his theory in fact fails to fully do justice to that intuition and it is therefore up to Dworkin and others to articulate it fully". Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 2002), p70.

²⁴⁵ Andrew Levine, *Rethinking Liberal Equality: From a "Utopian" Point of View* (Ithaca & London: Cornell University Press, 1998); Hinton, 'Must Egalitarians Choose Between Fairness and Respect?'

latter. DE seeks to achieve this social ideal by challenging all forms of domination, exploitation and oppression, and, in direct contrast to luck egalitarianism, does not seek to eliminate or ameliorate the effects of brute luck on people's lives.²⁴⁶ DE is described as 'democratic' because it regards two people as equal, not when they simply hold equivalent resources, but when each accepts the obligation to justify their actions by principles acceptable to the other.

Miller believes that the ideal of social equality is more deeply embedded in the contemporary moral conscious,²⁴⁷ and, as T.M. Scanlon notes, 'the ideal of a society in which people all regard one another as equals – has played a more important role in radical egalitarian thinking than the idea of distributive justice which dominates much discussion in our time.'²⁴⁸ Indeed, both Anderson and Scheffler claim that luck egalitarianism is not what egalitarian political movements have historically sought to achieve. Rather they have pursued the social and political ideal of equal social relations between citizens, which 'repudiates distinctions of moral worth based on birth and social identity'.²⁴⁹ This is as true for anti-feminists and anti-racists as it is for those who challenge inequalities that disadvantage homosexuals, the handicapped, and the aged. DEs also seek to claim the authority of the Rawlsian tradition, and Anderson, Scheffler and Hinton all express the view that the alternative conception of *social* equality they advocate is closer to the interpretation of equality within John

²⁴⁶ Anderson, 'What is the Point of Equality?' p288; Hinton, 'Must Egalitarians Choose Between Fairness and Respect?' p73.

²⁴⁷ Miller, 'Equality and Justice,' p32.

²⁴⁸ T.M. Scanlon, 'The Diversity of Objections to Inequality,' in Matthew Clayton & Andrew Williams (eds.) *The Ideal of Equality* (Palgrave Macmillan, 2002): pp41-60.

²⁴⁹ Anderson, 'What is the Point of Equality?' p312. I would include the repudiation of distinctions of social worth.

Rawls' 'difference principle' than the principles of luck egalitarianism. I examine this claim more fully in chapter 6.

The most prominent luck egalitarian philosopher is Ronald Dworkin (though he strenuously rejects that characterisation) and for that reason I focus my criticisms either at the generic LE principles in general or to Dworkin in particular. Dworkin, as an LE philosopher, argues that his egalitarianism aims to achieve the same social equalities as those advocated by DE, and that the concern for an egalitarian distribution is an extension of that concern for a broader ideal that includes social equality.²⁵⁰ As Miller points out, the two conceptions of equality do not necessarily conflict despite the fact that they draw upon different political traditions.²⁵¹ One reason that Scheffler and Anderson critique Dworkin more than any other LE theorist is precisely because he seeks 'to anchor his egalitarian distributive principles in a more general ideal of equality.'²⁵² Unless a theory of distributive equality is anchored within a broader conception of social equality the former will not necessarily be incompatible with an autocracy, and therefore, on its own the generic theory of LE is not incompatible with hierarchy and discrimination. It would be quite possible to equalise benefits between the complete lives of separate individuals without challenging existing prejudices, and indeed may even create new forms of

²⁵⁰ It should be noted that Dworkin himself strenuously rejects his characterisation as a luck egalitarian. See Ronald Dworkin, 'Equality, Luck and Hierarchy,' *Philosophy and Public Affairs* 31(2003): 190-198. However, Scheffler in his reply to Dworkin reasserts that characterisation. See Samuel Scheffler, 'Equality as the Virtue of Sovereigns: A Reply to Dworkin,' *Philosophy and Public Affairs* 31 (2003): 199-206.

²⁵¹ Miller argues that the distributive form of egalitarianism draws upon the liberal tradition, while social egalitarianism derives from socialism and the social democratic tradition. See David Miller, 'Equality and Market Socialism,' in P.K. Bordhan & J. Roemer (eds.) *Market Socialism: The Current Debate* (Oxford: Oxford University Press, 1992).

²⁵² Scheffler, 'Equality as the Virtue of Sovereigns,' p203.

discrimination such as ageism as a way of ensuring that diachronic equality be maintained. Thus we have a fourth objection to LE.

Objection 4: By itself LE is not incompatible with a social hierarchy that involves discrimination.

It is therefore a DE claim that there are situations in which the respective prescriptions of LE and DE are mutually incompatible. One other such situation is where the interpretation of 'fairness' and 'respect' appear to conflict. While LEs focus on their understanding of fairness, summed up in the LE maxim, Hinton and Jonathan Wolff²⁵³ have argued that there are in fact two values which are equally central to egalitarian social justice, and that in addition to 'fairness' we should also give consideration to the value of 'respect'. Hinton argues that these two values sometimes conflict within LE because luck egalitarians understand 'fairness' as the compensation for the effects of brute luck, and they think of the equalisation of brute luck in purely distributive terms. LEs endow this understanding of fairness a lexical priority over all other values, including that of respect, with the result that the attempt by LEs to ensure fairness in the Real world would often involve making a sacrifice of respect.

For example, Anderson claims that implementing the LE maxim would involve making moralising judgements regarding the level of personal responsibility people have displayed in their lives. These judgements would be necessary in order to properly separate the two forms of brute and option luck, given the obvious

²⁵³ Timothy Hinton, 'Must Egalitarians Choose Between Fairness and Respect?'; Jonathan Wolff, 'Fairness, Respect, and the Egalitarian Ethos'. It is of course possible for someone to have self-respect without respect-standing if they perhaps had such disdain for the opinion of others.

difficulties involved with the separation of choice and circumstance.²⁵⁴ The need for such moralising about other people's behaviour is a consequence of the lexical priority of the LE interpretation of fairness which overrides any concern for showing respect to the unfortunate whether they are partly responsible for their plight or not. Wolff argues that the neglect of the value of respect inherent within LE would also manifest itself in the 'shameful revelations' of personal inadequacy that individuals would need to make in order to qualify for compensation for brute bad luck.²⁵⁵

As we have noted, Rawls views issues of respect and self-respect as being at the very core of a theory of justice, and one of the central primary social goods to which he believes all citizens should have access are the 'social bases of self-respect'. These should include a person's sense of his own value both intrinsically and to society.²⁵⁶ Generally speaking, therefore, for an individual to enjoy self-respect they will usually need to have the respect of others or, as Wolff calls it, 'respect-standing'.²⁵⁷ Moreover, self-respect and the normative ideal of DE are closely related because, as Robin Dillon argues, '[w]hether individuals respect themselves or not is very much a function of their social relationships and of the structure and functioning of the institutions among which they live; when these relationships and institutions are unjust, discriminatory or oppressive, self-respect can be diminished, distorted or

²⁵⁴ Anderson, 'What is the Point of Equality?' p310.

²⁵⁵ Wolff, pp113-118. Wolff argues that if someone remained unemployed during a period of very low unemployment then they would have to prove that they were too inadequate to be employed in order to qualify for compensation. However, LEs might argue that in an ideally just world such revelations would not be seen as shameful. The fact that someone had personal inadequacies such as that they were unemployable because they were stupid would be seen purely as a matter of luck.

²⁵⁶ John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971, revised edition, 1999): pp386-7, 404.

²⁵⁷ Wolff, 'Fairness, Respect, and the Egalitarian Ethos'. It is of course possible for someone to have self-respect in the absence of respect-standing if one had disdain for the opinion of others.

destroyed.’²⁵⁸ Thus, we have a fifth criticism of LE, which, together with the objections detailed above, can be summarised as follows;

Objection 1: Distribution is not the only, or even the most, important feature of egalitarianism;

Objection 2: The LE distinction between choice and circumstance is not always morally plausible;

Objection 3: The LE conception of fairness is not a refined version of Rawl’s ‘difference principle’;

Objection 4: By itself, LE is not incompatible with a social hierarchy that involves discrimination;

Objection 5: The LE conception of fairness may conflict with ideas about the value of respect.

In response to these criticisms of distributive LE, the social ideal of DE would tentatively defend the following premises;

Premise 1: Social relations between citizens are the most important feature of egalitarianism;

Premise 2: Social hierarchy and wrongful discrimination should be challenged directly as a way of achieving equal social relations;

Premise 3: Social equality seeks to balance fairness with respect.

I will return to these objections to LE and the normative goals of DE in section 4.6. It is my claim there that the significant differences between the two theories can be reduced to a difference of opinion over the value of the CLV. While LE is committed to the CLV, DE rejects it.

²⁵⁸ Robin S. Dillon, ‘Introduction,’ in *Dignity, Character and Self-Respect* (New York: Routledge, 1995), p36.

4.2 DE, luck and egalitarian ageism

As noted above, it is my claim that the principles of DE and LE conflict in the way they would each treat the old. It will be my claim that the implications of LE principles would tend to justify age discrimination as an unfortunate consequence of ensuring the equality across the complete lives of separate individuals (or diachronic equality). This then is what I have called ‘egalitarian ageism’. The definition and taxonomy of ageism outlined in chapter 2 argued that such age discrimination was not intrinsically wrong when it did not convey judgements of negative moral or social worth, but that it might be extrinsically wrong if it neglected or violated the fundamental synchronic interests of persons. This is precisely what the normative goal of diachronic equality would condone, and when it does it is extrinsically morally wrong and may be called *ageist* or *ageism*.

The alternative ideal of democratic social equality is aimed at ensuring that citizens hold equal social and political standing within society and enjoy equal social relations. As Scheffler notes, on this view the ‘question that is of particular interest to political philosophy is the question of what a society of equals is like and, in particular, what sort of social, political, and economic institutions are appropriate to such a society.’²⁵⁹ If institutions deny certain goods to individuals on the basis of age and they do this in order to implement equal benefits over the course of a complete life, then they are likely to bring about a lack of self-respect amongst those of a certain age as a consequence. Those individuals will be enjoying fewer of the benefits that others in their society currently do on the basis that they have already consumed

²⁵⁹ Ibid.

their fair share. But the justice of this implication can be challenged by the idea outlined earlier that people have irreducible synchronic self-interests, or synchronic needs, which should be protected. In such a case LE may be shown to not ensure the continued existence of the social bases of self-respect.

I argue, therefore, that from the perspective of the social egalitarian ideal of DE it would obviously be morally wrong to neglect or violate the fundamental interests and needs of anyone, whatever their age, and DE would therefore not countenance the inequality of social relations between citizens that such age-discrimination would often create. Therefore, I believe the best defence of an anti-ageist ethic is for it to be embedded within a democratic social egalitarianism rather than to seek to defend it within the currently dominant philosophical position of luck egalitarianism.

However, appealing to social equality does not negate the need to determine a just form of economic distribution. And while the ideal of social equality does not by itself prescribe any particular material distribution it certainly has distributive implications. Certain patterns in the distribution of goods will be more instrumental than others in securing the equal social relationships between citizens that democratic equality prizes. But, as Dworkin argues, it is not enough to say that once the 'constitutional essentials' are satisfied then procedural fairness justifies whatever distribution the play of ordinary politics produces.²⁶⁰ We need to be clear what kinds of distribution DE would justify, and the rest of this chapter and the next outline more fully how some distributive principles justify ageism while others do not. We should finally note in this section that just as there are several versions of LE so too are there

²⁶⁰ Dworkin, 'Equality, Luck and Hierarchy,' p198.

likely to be several versions of DE, and there may arguably be several distributive principles that are compatible with the core DE goal of equalising social relations between citizens.

We should note that although few writers have so far defended a version of DE there is no doubt that there may be serious objections to the theory as a whole that need to be addressed. Some such criticisms have been raised against Anderson's article in particular.²⁶¹ Nevertheless, my aim in this thesis has been to outline a philosophical position which would best defend an anti-ageist ethic, and this I believe to be DE. The fact, therefore, that there might be sound criticisms of that general position is not directly relevant to my aim. However, in chapter 7 I do respond to the criticisms of DE that relate to its treatment of older people.

4. 3 Initial questions for distributive egalitarians

This section examines some of the fundamental questions that contemporary theories of liberal egalitarianism normally address. In the following two sections I will examine how the way in which these questions are addressed affects the justification of egalitarian ageism.

²⁶¹ For example, see Richard J. Arneson, 'Luck egalitarianism and Prioritarianism,' *Ethics* 110 (2000): 339-349; Ronald Dworkin, 'Sovereign Virtue Revisited,' *Ethics* 113 (2002): 106-144, esp 113-118. See also the papers of David Sobel and Thomas Christiano to be found at

browns.edu/departments/philosophy/bears. Among the criticism are, firstly, that Anderson conflates the psychological and technical economic senses of envy (see Anderson, 'What is the Point of Equality?' p287). Secondly, Anderson wrongly claims Dworkin's 'equality of resources' lacks respect for some persons because it bases aid on public declarations that they suffer 'personal inferiority'. But distributive egalitarians would argue that within an ideal society such attitudes would not be the basis of compensation. Rather, it would simply be acknowledged as unfair that some people should have fewer personal resources than others. Thirdly, Anderson says that equality of resources insults, or at least is disrespectful towards, people by making 'judgements of moral desert and responsibility' about them. She claims this forces them as a condition of receiving compensation to obey other people's

(i) Equality, priority, or sufficiency?

The first question for those who are concerned with distributive equality is whether such a theory should be strictly egalitarian between persons, whether it should be prioritarian and so only require us to give priority to the worst off citizens or group in society (thus not valuing equality itself as an intrinsic good), or whether it merely requires us to ensure the existence of a social minimum below which no-one should fall. Many contemporary liberals describe themselves as egalitarians but few of them would claim that equality is more important than other things like providing incentives for the talented to be more productive, and in a seminal article Derek Parfit outlined the differences and respective implications between such theories.²⁶² Those that believe that equality is intrinsically valuable are subject to the well-known ‘levelling-down’ objection, which is to say, critics claim that such strict egalitarians would forgo increases in the well-being or benefits of everyone if it meant a move to a less equal society.²⁶³

The priority view, however, aims at prioritising the interests of the worst off, but also accepts the legitimacy of the idea that some inequalities are *pareto superior*, i.e. that they are better for some and worse for no one. Moreover, by allowing some level of inequality to incentivise the more talented to be productive a theory can aim to improve the situation of everyone in society by increasing the overall product of the

judgements about the uses they should have put their resources to rather than what they judge themselves. However, many would argue that such judgements are necessary to prevent free-riding.

²⁶² Derek Parfit, ‘Equality or Priority?’ in M. Clayton & A. Williams (eds.), *The Ideal of Equality* (Palgrave Macmillan, 2002): 81-125.

²⁶³ For a discussion and defence of the ‘levelling-down’ objection see Larry Temkin, ‘Equality, Priority, and the Levelling Down Objection,’ in Clayton & Andrews (eds.) *The Ideal of Equality*, pp126-162.

economy as a whole. It is for this reason that John Rawls can be described as a prioritarian rather than a strict egalitarian. His 'difference principle' allows inequality, but only insofar as it benefits the expectations of the least advantaged in society.²⁶⁴ Rawls thus gives priority to the least advantaged in a society while at the same time allowing incentives for the more talented, and so justifies some inequality.²⁶⁵ There are, however, also some differences between Rawls and other alleged prioritarians, and Thomas Nagel claims that although the worst off have the greater moral urgency society should not give exclusive concern to them.²⁶⁶ Instead, so Nagel believes, we should balance the competing weights with the moral weight we give to increasing benefits for others in society.

In the words of Derek Parfit the chief difference between strict equality and priority is that '[Strict] Egalitarians are concerned with relativities: with how each person's level compares with the level of other people. On the Priority View, we are concerned only with people's absolute levels'.²⁶⁷ Prioritarianism is therefore non-comparative in the sense that it is unconcerned with how well off others are provided the worst off are given any available aid. Thus, 'what is bad is not that these people are worse off than *others*. It is rather that they are worse off than *they* might have been.'²⁶⁸

²⁶⁴ John Rawls, *A Theory of Justice* Revised Edition (Oxford: OUP, 1999).

²⁶⁵ The need for these incentives, and so the inequality, has been challenged by G.A. Cohen, who argues that to be consistent with his theory Rawls should include an egalitarian ethos that would negate the desire of citizens from wishing to benefit from the inequality that incentives would bring. See Cohen, 'Incentives, Inequality, and Community,' in Stephen Darwell (ed.), *Equal Freedom: Selected Tanner Lectures on Human Values* (Ann Arbor: The University of Michigan Press, 1995).

²⁶⁶ Thomas Nagel, 'Equality,' in *Mortal Questions* (Cambridge: Cambridge University Press, 1979), pp106-128.

²⁶⁷ Parfit, 'Equality and Priority,' p23. Naturally prioritarianism is comparative in the sense that we must compare the well-being of citizens in order to determine who the members of the worst off group are.

²⁶⁸ *Ibid*, p22.

There is of course a third and much less demanding goal, the idea of a social minimum (SM), which some so-called egalitarians would claim is both more attainable and so morally more defensible.²⁶⁹ A social minimum, or the doctrine of sufficiency, determines a level of well-being necessary for a decent and tolerable life, and beneath which no member of society should be allowed to fall. Harry Frankfurt argues for this goal by claiming that ‘what is important from a moral point of view is not that everyone should have the *same*, but that everyone should have *enough*’.²⁷⁰ Indeed, Jeremy Waldron argues that a principle of sufficiency is the most that people within the Rawlsian *Original Position* behind the *Veil of Ignorance* would agree on, and that therefore, although Rawls himself dismisses the idea of the sufficiency minimum,²⁷¹ Rawls’ theory may in fact justify that rather than the difference principle.²⁷²

Of course, the problem with a sufficiency minimum is that it denies that there is anything morally wrong with the inequalities that exist between persons above that minimum. This doctrine would in fact condone very wide, even unlimited, disparities between the rich and poor, and this is undoubtedly the important intuitive objection against it. However, such unlimited inequality might not ensue if we were to understand sufficiency in Rawlsian terms. Integral to Rawls’ theory is the idea that

²⁶⁹ See Alexander Rosenberg, ‘Equality, Sufficiency, and Opportunity in the Just Society,’ in Ellen Frankel Paul, Fred D. Miller, Jr., & Jeffrey Paul (eds.) *The Just Society* (Cambridge: Cambridge University Press, 1995): 54-71.

²⁷⁰ Harry Frankfurt, ‘Equality as a Moral Ideal,’ in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988): 134-57, p134.

²⁷¹ Rawls, *A Theory of Justice*, p124.

²⁷² Jeremy Waldron, ‘John Rawls and Social Minimum,’ in *Liberal Rights: Collected Papers, 1981-1991* (Cambridge: Cambridge University Press, 1993): 250-270.

rational, self-interested agents, choosing principles of justice from behind a veil of ignorance, would have to agree upon principles to which they could consistently commit themselves even if they found themselves on the bottom rung of society once the veil was lifted. These are the *strains of commitment*, and as a thought experiment they ensure that the principles chosen have moral plausibility. It might therefore be rational for individuals to choose a social minimum, rather than the difference principle, but to ensure also that there is some limit to the permissible inequality above that minimum. In this way the sufficiency minimum might meet the strains of commitment.

We can summarise the three distributive principles outlined in this section thus;

Principle of [strict] equality: it is in itself bad if some people are worse off than others.²⁷³

Principle of prioritarianism: that benefiting people matters more the worse off people are.²⁷⁴

Principle of sufficiency: that no-one should fall below a certain minimum threshold.

(ii) Equality of What?

The second question a distributive theory of equality must address is exactly what it is that we should be distributing, and this debate has been outlined in another seminal article, this time by Amartya Sen, as 'Equality of What?'²⁷⁵ The three most common

²⁷³ Parfit, 'Equality and Priority,' p4.

²⁷⁴ Ibid, p19.

²⁷⁵ Amartya Sen, 'Equality of What?' in *Equal Freedom: Selected Tanner Lectures on Human Values*, edited by Stephen Darwall (Ann Arbor: The University of Michigan Press, 1995): 307-330.

answers to this question are that we should equalize welfare, resources or capabilities (the latter being Sen's own preferred metric). Welfare is probably the least plausible because of the practical problems involved with measuring how happy, or how much welfare, each individual in a society is experiencing, and the problem of how we quantitatively and qualitatively compare our happiness with that of others. Indeed these are the same problems of interpersonal comparison that utilitarians face when defending utility as the intrinsic and normative good.

The other well-known problems with equality of welfare as a metric are those of expensive, cheap and malformed tastes. That is to say that if we aim to equalise welfare, then the distribution of resources will be held hostage to people who have tastes and preferences that are costly to satisfy, or to those who are for some reason inefficient at converting resources into welfare. The elderly, of course, are often inefficient at converting resources into welfare due to infirmity (though not necessarily more so than handicapped young people), and it might be thought justified as a result to divert more resources towards older individuals for this reason.

However, if a person has inexpensive tastes, either as a consequence of genetic or socially determined reasons, but is nevertheless able to reach a relatively high level of welfare without much investment, then the equality of welfare metric denies that they should have as many resources as those with expensive tastes. This implication might in itself be thought wrong. However, one socially determined reason as to why an individual might have inexpensive tastes is that those tastes are malformed. Imagine, for example, an elderly person who has internalised a culturally oppressive stereotype regarding people her age, and imagine that this leaves her with a certain self-

abnegation. In such a situation the equality of welfare metric would not challenge the reasons for her cheap tastes, and may in fact require her to forfeit some of her pension in order to finance the interest in paragliding that a more ambitious younger person has. Thus, equality of welfare is problematic to the extent that it would arguably ignore the existence of cultural ageism without further refinement. And, in order for it to not ignore cultural ageism, equality of welfare would have to involve some overarching principle that determined which kinds of welfare were wrong and which permissible.²⁷⁶

The equality of resources metric does not suffer from the same problem of measurement as welfare, because the quantity of money or goods that each person has a share of is easily quantified. Both Ronald Dworkin²⁷⁷ and Eric Rakowski²⁷⁸ measure the benefits that individuals are owed in terms of ‘impersonal’ resources such as goods and money, and make a distinction between these and the ‘personal’ resources of individuals which include their intelligence, skills and abilities. Dworkin’s theory, which we look at in more detail below, compensates individuals for any lack in their personal resources with a redistribution of impersonal resources.²⁷⁹ John Rawls is also sometimes characterised as a resource egalitarian, and the benefits to which citizens are to have ‘fair’ shares of within his theory are defined as ‘primary social goods’.²⁸⁰

²⁷⁶ Another common criticism of the welfare metric is that the process of determining the various levels of welfare enjoyed by different people would involve significant impositions upon their privacy.

²⁷⁷ Ronald Dworkin, ‘Equality of Resources,’ in *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge: Cambridge University Press, 200): 65-120.

²⁷⁸ Eric Rakowski, *Equal Justice* (Oxford: Clarendon Press, 1991).

²⁷⁹ For a criticism of Dworkin’s theory see Colin M. Macleod, *Liberalism, Justice and the Market* (Oxford: Clarendon Press, 1998); Phillippe Van Parijs, *Real Freedom For All: What (if anything) can justify capitalism* (Oxford: Clarendon Press, 1995), section 3.4.

²⁸⁰ John Rawls, *A Theory of Justice*.

Primary goods are those things that every rational individual is presumed to want whatever else she wants, and they include 'rights and liberties' that must be strictly equal, and 'income and wealth' and 'power and opportunities' that are to be distributed according to the 'difference principle'. Both resources and primary goods contrast with the welfare metric in that they would not inherently ignore cultural ageism because, as we saw in chapter 3, they are compatible with the advocacy strategy.

A third egalitarian metric is that of the capability approach, and this is concerned with evaluating a distribution in terms of a person's actual ability to achieve various valuable *functionings*. Functionings are understood as the various things a person can do or be, and which are constitutive of living. While some functionings can be quite basic, such as being adequately nourished and being in good health, others, like the achieving of self-respect or the avoidance of social exclusion, are more complex. Capability *sets* represent the alternative combinations of functionings that it is possible for a person to achieve, and which embody a particular conception of the good.²⁸¹

Sen argues that the capabilities metric has the advantage over resources and primary goods in that it concentrates on freedom itself rather than on the means to achieve freedom. Primary goods and resources are general purpose means that are useful for the pursuit of different ideas about the good that individuals might have, but each individual must then convert those resources, or means to freedom, into actual freedom. However, people are able to convert resources into freedom at different

²⁸¹ Amartya Sen, *Inequality Re-examined* (Oxford: Oxford University Press, 1992).

rates, and because the conversion rates of different people will differ significantly, an equality of resources or primary goods might go hand in hand with serious inequalities in the actual freedoms enjoyed. These variations in conversion rates can arise either from social issues or simple physical differences between people, and one example of the latter given by Sen is that of the differences in metabolic rates caused by age and gender. A social issue that would also undoubtedly affect the conversion rates of some individuals are the consequences of cultural oppression, and particularly the diminishing of self-respect that ensues from internalising the negative meanings conveyed by culturally oppressive stereotypes. There would be good reason, therefore, for any theory incorporating the capability metric to challenge those culturally oppressive stereotypes.

The capability approach differs from equality of welfare because it makes room for a variety of human acts and psychological states as important in themselves irrespective of the welfare they provide, while at the same time it can mean providing some people with more resources than others to bring them up to the same capability.²⁸² It may also have an affinity with Rawls' primary goods metric. Although Rawls has often been thought of as a resource egalitarian, he has claimed that 'as Sen argues, any such index [of primary social goods] will consider basic capabilities, and its aim will be to restore citizens to their proper role as normal members of society'.²⁸³ Thus, Rawls' metric may be understood as a hybrid of capabilities and resources, and that his list of primary goods should be supplemented with an account of those capabilities essential to be a normally cooperating member of the community.

²⁸² Contrary to this explanation of the capability metric, Dworkin claims that it ultimately collapses either in to equality of welfare or resources. See Dworkin, *Sovereign Virtue*, chapter 7.

²⁸³ Rawls, *Political Liberalism*, p186.

Naturally, the capabilities approach is not immune to criticism, and one important criticism is that it judges the well-being of persons independently of the attitudes they themselves have with regard to their capabilities. This points to the fact that while both welfare and resource metrics have an important subjective component, the capabilities metric is essentially an 'objective list' theory. Welfarism is directly concerned with the happiness or preference satisfaction of individuals and requires the state to equalise this as much as possible. The resource metric is subjective in the sense that it provides individuals with the opportunity to purchase whatever goods they desire within a free market. The capabilities metric, in contrast, selects an objective list of those functionings to be provided by the community irrespective of whether they satisfy the preferences of citizens. Consequently, it might be claimed that such an objective list would violate liberal neutrality between competing conceptions of the good: that the metric was biased in favour of such conceptions that the list supported but failed to respect those ideas about the good life that it did not. Thus, the capability metric may even be characterised as perfectionist.

However, Elizabeth Anderson responds to this criticism by claiming that it misunderstands the distinction between what people want and what the political community is obligated to provide them with.²⁸⁴ The state, which is the power of citizens as a collective body, ought to secure for citizens a certain list of goods, not because they are the ones that are the most important for human happiness or flourishing, but because they are the goods that the members of society can agree to collectively provide given the fact of pluralism. As Rawls has shown, there may be a

²⁸⁴ Anderson, 'What is the Point of Equality?' p329.

plurality of reasonable though opposing comprehensive conceptions of the good life that are held by individuals within society, but if it is a stable and just society there will also be an overlapping consensus among those otherwise incommensurable doctrines.²⁸⁵ It is this consensus that allows us to identify those goods that all reasonable people can recognise as important and as having a legitimate basis on which individuals can make moral claims upon one another.

Thus, an objective list of socially provided capabilities is not necessarily based upon any perfectionist assumptions or by any particular conception of the good. In any case, individuals are not required to use the benefits that society provides and are entitled to satisfy their preferences by other means. All that the capability view denies is that it is the responsibility of the state to either provide citizens with happiness directly, in the way that welfarists and utilitarians claim, or with the direct means of satisfying their subjective preferences as do resource egalitarians. In practical terms the capability metric can be seen as providing citizens with a guaranteed access to a list of goods that ensures a sufficiency minimum of certain freedoms. However, as with the SM principle outlined above, the capabilities metric is silent once the relevant capability threshold has been reached, and says nothing about the justice or otherwise of inequalities that continue to exist above that threshold.

²⁸⁵ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), chapter V.

(iii) *The unit of egalitarian concern: Synchronic or diachronic?*

The third question that a distributive egalitarian should ask of a political theory is what Larry Temkin has referred to as ‘the *unit* of egalitarian concern’.²⁸⁶ Dennis McKerlie defines what has been called the complete life view (CLV) as the normative principle ‘that different people’s share of resources, or welfare, should be equal when we consider the amounts of those things that they receive over the complete course of their lives.’²⁸⁷ While this particular definition may only be applicable to strict equality, Temkin recognises that the view can be applicable to either equality or priority and defines it thus:

The CLV: an egalitarian should be concerned about A’s being worse off than B to the extent, and only to the extent, that A’s life, taken as a *complete whole*, is worse off than B’s, taken as a *complete whole*.²⁸⁸

The usual assumption is that justice is concerned with complete lives rather than merely with parts of them, and some liberal thinkers, such as Thomas Nagel, are explicit in claiming that ‘the subject of an egalitarian principle is not the distribution of particular rewards to individuals at some time, but the prospective quality of their lives as a whole, from birth to death’.²⁸⁹ We should note that the use of the word ‘prospective’ implies that Nagel’s commitment to diachronic equality would support the restricting of goods to older people *if it seemed* that those older persons had

²⁸⁶ Larry S. Temkin, *Inequality* (New York & Oxford: Oxford University Press, 1993), chapter 8. This third question has rarely been addressed while the two questions between equality and priority and between metrics have been discussed exhaustively.

²⁸⁷ Dennis Mckerlie, ‘Equality and Time,’ *Ethics* 99, (1989):492-502, p476.

²⁸⁸ Temkin, *Inequality*, p233.

²⁸⁹ Thomas Nagel, *Equality and Partiality* (Oxford: Oxford university Press, 1991), p69.

already had their fair share (or more) over their complete lives than the young and middle-aged could expect to enjoy in theirs.

The CLV is integral to mainstream liberal egalitarianism, and Mckerlie has claimed that the two most prominent contemporary liberal thinkers, John Rawls and Ronald Dworkin, both explicitly embrace it.²⁹⁰ However, while Dworkin's use of the CLV is quite explicit, as we shall see below, the reference that Mckerlie uses to suggest that Rawls embraces the CLV is rather less so.²⁹¹ Indeed, I would argue that this reference merely suggests that Rawls unreflectively assumes the CLV rather than that he actively and exclusively supports it. And rather than rejecting any concern for synchronic well-being, as Mckerlie suggests, I argue in chapter 6 that in fact Rawls' theory of justice can be read to involve a significant concern for the temporal or synchronic benefits that people enjoy.

Although rarely discussed within political philosophy the issue of whether we should adopt a synchronic or diachronic unit of egalitarian concern seems fundamental to distributive justice. The fact is that it directly determines which individuals have claims of justice against the community. It is a question that Parfit briefly addresses in his discussion of priority and strict equality, and he gives three possible answers to the question of to whom we should give priority:

²⁹⁰ Mckerlie, 'Equality and Time,' p476.

²⁹¹ The references Mckerlie gives as evidence for Rawls' commitment to the CLV are in *A Theory of Justice*, pp78 and 178 (these pages refer to pp67-68 and p155 respectively in the Revised edition). Rawls assumes that the membership of the worst off group in society remains constant. That individuals are members of it from birth to death. However, I point out in chapter 6 that this is not necessarily so, and that even from what Rawls himself says it would seem more plausible that an individual could be a member of the worst off group at one point in their lives and not a member at another point. In short, membership of economic groups is synchronic.

- (1) those who are worse off in their lives as a whole,
- (2) those who are worse off at a time,
- (3) those who have needs that are morally more urgent.²⁹²

Parfit notes that there is often a divergence between (1) and (2), but a convergence between (2) and (3). Thus, someone who is now among the worst off may have been quite well off in the past, but if someone is worse off at a time then her needs are likely to be morally more urgent. However, despite his insight, Parfit assumes for the purposes of his article that ‘there is no difference between those who would be worse off at a time, and those who would be worse off in their lives as a whole.’²⁹³ Nevertheless, if, as I have argued, each individual has fundamental synchronic interests that have independent moral weight, then the distinctions that Parfit makes are very important. We must decide whether the moral urgency of those synchronic interests provide individuals with claims for impersonal resources that outweigh the moral importance of their complete life diachronic share.

The CLV does not take this view, but rather it values diachronic equality over and above the importance of temporal needs. As noted in section 2.2, few liberal egalitarians view ‘needs’ as a plausible principle on which to distribute goods, and it is generally assumed that if people have needs then they should satisfy them themselves in the same way as they would their desires. That is, through the

²⁹² Parfit, ‘Equality or Priority,’ section VIII, pp20-22.

²⁹³ Ibid, p103.

investment and consumption of their equal diachronic shares. Nevertheless, if the CLV can be shown to justify material deprivation for individuals at a time which is significantly detrimental to the interests of the old (i.e. that their basic synchronic needs will go unmet), then there are grounds to call this deprivation wrongful. The CLV is a normative principle of social justice that implicitly justifies temporal or synchronic inequality between persons in pursuit of greater equality over the complete lives of separate persons. This in turn justifies discriminating against the old, as far as distribution is concerned, if by so doing we are able to achieve greater equality between the complete lives of different people. The question, therefore, is whether egalitarians should adopt the diachronic CLV, and so equalise or prioritise benefits over complete lives, or whether they should be concerned rather to equalise or prioritise benefits between separate persons within the synchronic temporal segments of their lives.

Mckerlie defends the claim that we should give priority concern for the synchronic circumstances of the worst off group of individuals at a time in what he calls the ‘time-specific priority view’, or what I term the synchronic priority view (SPV). And he argues that the application of priority to life stages is arguably more intuitive than applying it to lifetimes. We can now define at least four alternative distributive views.

1. *The diachronic egalitarian view*: that we should minimize the sum total of inequality between the complete lives of separate individuals.
2. *The diachronic prioritarian view*: that it matters more to benefit people the worse of they are over their complete lives.

3. *The synchronic egalitarian view*: that we should minimize the sum total of inequality between individuals at-a-time.

4. *The synchronic prioritarian view*: that it matters more to benefit people the worse off they are at-a-time.

Having outlined the synchronic and diachronic versions of strict equality and priority, both of which are further discussed in chapter 5, we should now turn to the principle of SM and determine whether that too might be applied either in synchronic or diachronic terms. My claim is that it can only plausibly be thought of synchronically because its underlying premise is that people should always have 'enough'. As we have already noted, one might be well-off at one synchronic point in one's life and destitute the next, and those who suffer even periodic destitution do so because they do not have enough at that temporal stage of their lives. In terms of Parfit's insight, the needs of such people now have moral urgency. The SM view must therefore be applied synchronically if it is to honour the premise that gives it intuitive force. And because the SM would not be concerned with how well off someone has been in the past it will necessarily violate the CLV that each of us should have an equal diachronic share.

Thus, integral to the idea of a SM is that distribution is understood in synchronic terms, and the view would not therefore permit the more vulnerable citizens to be entirely destitute. Being synchronic the SM would have to take in to account the different needs that people have at different points in their lives, and as Clark Wolf argues, it would therefore 'ensure that the fundamental needs of the elderly do not go

unmet'.²⁹⁴ However, even the SM would not rule out age discrimination altogether because more resources might still be made available to provide for the needs of the young over and above the minimum guarantee provided to the old.

Thus, there are various synchronic alternatives to the CLV, but although these views have some intuitive plausibility, there are nevertheless fundamental theoretical problems involved with thinking that the unit of egalitarian concern is purely synchronic. Perhaps the most important of these involves the independent moral principle that individuals should take personal responsibility for the success of their lives. Indeed, a fundamental justification for assuming the CLV is that it would require individuals to distribute their equal share of benefits prudently and so take personal responsibility for their own well-being in later life. The purely synchronic application of an equality of resources or welfare might be morally implausible because we would be denying the importance of the personal responsibility each of us has for the success of his life. If each of us was guaranteed an equal share of benefits at each temporal stage of our lives, then there would be no incentive for any of us to be prudent in our life gambles. Thus, any endorsement of synchronic equality would obviously violate the principles of LE outlined in section 4.1. However, there are also practical implications for the economy of an exclusive concern for the synchronic view, because if people are continuously compensated for imprudence, i.e. for not saving or investing resources or not working hard, then the economy would likely become increasingly less productive.

²⁹⁴ Clark Wolf, 'Healthcare access, population ageing, and intergenerational justice,' in A Harry Lesser (ed.), *Ageing, Autonomy and Resources* (Aldershot: Ashgate, 1999): 212-241, p233.

There is another more practical problem for the synchronic view in that it would need to define exactly what duration a 'synchronic temporal period' should be. For the purposes of public policy we might categorise individuals by age, and the age ranges of these categories could be whatever is most efficient from an administrative perspective. We have said in the previous chapter that it is not helpful for anti-ageists to think of the old as a social group, and that they do not constitute such a group in any objective sense. Nevertheless, social categorization is a necessary feature of delivering public policies in a modern society and is not in itself wrong.

4.4 Egalitarian metrics and the fundamental needs of the old

How do the various egalitarian distributive principles and metrics affect the potential for egalitarian ageism? As far as the metrics of both welfare and resources are concerned, egalitarian ageism is likely to be justified if they are applied in a way that is exclusively diachronic because that would countenance the neglect of the synchronic interests of older people. Alternatively, if we were to take a synchronic view then either welfare or resources would be equalised at each temporal moment, and that would mean that irrespective of the claims individuals had already made on the community in the past they would never be able to exhaust their claims before or after they reached old age. As noted, though, this might arguably cause problems for the principle of personal responsibility.

The synchronic view also presents particular problems for the welfare metric with regard to the process of aging. The fact that there is some degree of mental and physical decline involved with ageing means that the well-being of people is likely to

naturally diminish as people get older. Thus greater resources would be necessary for older people to achieve the same level of welfare as younger people. The changing conversion ratio of resources to welfare as we age also means that the equality of welfare metric would need to find a way of simultaneously comparing the interpersonal welfare between people who are young, middle-aged and old. However, this measuring process is further complicated because the relative decline that each older individual experiences will be at a different rate. Therefore, although the same level of goods might equalise the welfare of two older persons, person A and person B, at one temporal moment, this situation is not constant. If person A's physical and mental condition declines faster than that of person B over the next couple of years, then it will be necessary to transfer more resources to A than to B at a second temporal moment to continue to equalise their welfare. I believe, therefore, that the welfare metric is implausible in a practical sense and particularly so when looked at from a synchronic perspective. For these reasons I will focus upon the possibilities of the resource and capability metrics over the rest of this thesis.²⁹⁵

We have seen that resources can be distributed either synchronically or diachronically, but if an egalitarian theory only entitled a person to a certain quantity of a particular resource they need over their complete lives then once that equal diachronic share had been exhausted the individual would no longer be entitled to any more. If the resource in question was health care, and the individual had already had his complete life share, then further health care in the form of emergency treatment

²⁹⁵ Although G.A. Cohen's preferred egalitarian metric 'equality of access to advantage' appeals in part to welfarism he is nevertheless conscious that finding out people's relative levels of advantage may be intolerably intrusive. Cohen views this as an issue of freedom. Thus, Cohen believes that the independent value of freedom should limit the degree to which welfarist policies should be implemented. See G.A. Cohen, 'On the Currency of Egalitarian Justice,' p910.

following a road accident might be denied on the basis of fairness. Understood in this way, diachronic shares of resources do not take account of the principle of urgency or of synchronic need. And it is therefore these fundamental needs that an exclusive concern for the CLV endangers if what it seeks to do is merely distribute resources or welfare as equally as possible over a complete life.

In contrast to the other distributive principles and metrics, however, there is a commonality between the capabilities metric and the doctrine of sufficiency in that they share an appeal to the concept of urgency, or of synchronic need. I have already claimed that any plausible sufficiency doctrine is concerned with how well off people are at a time and so does not work on a diachronic basis, and a similar dimension of synchronic concern would also seem to be inherent within the capability metric. Therefore, if we are concerned about the synchronic needs of particular age groups we could do worse than appeal to these principles. Once adopted, though, the capability metric must determine the particular synchronic functionings that society is to guarantee citizens. We might start, however, by suggesting that those functionings should include the fundamental synchronic interests of individuals to having one's basic needs met, to autonomy, and to enjoying the social bases of self-respect. Indeed, Sen is in any case committed to these very functionings. He uses the term 'basic capabilities' to refer to the satisfaction of certain elementary and crucially important functionings up to certain levels, e.g. the ability to be well-nourished and well-sheltered, the capability of escaping avoidable morbidity and premature mortality. The central place given to the functioning of autonomy within Sen's metric is illustrated by his aim to focus upon the actual extent of freedom for individuals to choose ways of living as opposed to merely providing them with the means to

freedom as equality of resources arguably does. And self-respect is viewed by Sen as a more complex capability along with that of being able to appear in public without shame, or in avoiding social exclusion.

4.5 The CLV and Political philosophy

The purpose of this section is to examine the influence of the CLV within mainstream liberal political philosophy, and particularly with regard to the principles of LE. It is my claim that LE is committed to the CLV while DE rejects it, and it is this disagreement concerning the CLV that explains the wider normative differences between the two theories outlined in the first section of this chapter.

As noted, the fundamental principle underlying all forms of the generic LE principle is a distinction between option and brute luck. The principle requires that individuals should be compensated for disadvantages for which they are not responsible, but that they should bear the full costs of the adverse consequences of their choices. This principle, in turn, incorporates the two premises that the choice-circumstance cut is one that is plausible, and that justice is an essentially distributive ideal. Moreover, the two principles are mutually supportive.

LE embraces an exclusive concern for the CLV because only by doing so can it give full expression to these two premises. Firstly, the CLV of equality, or diachronic equality, is viewed by luck egalitarians as the fairest form of distribution, and secondly, the CLV guarantees the cut between choice and circumstance. Indeed, the principle of diachronic equality between complete lives requires that people take

personal responsibility for the choices they make, and to pay for the true cost of their lives. LE does not permit the redistribution of resources from the prudent to the imprudent, or from the industrious to the lazy, because such free-riding would violate the fairness of diachronic equality. In any case, if personal choice and effort are the only just reasons for any inequalities of benefits, as LE claims, then compensation for bad option luck is unwarranted. Therefore, if person A has expensive tastes he must also be productive in order to finance them, and in doing so his choices would cost no more to society than person B who has cheap tastes and works very little.

By allowing people to benefit fully from good option luck also ensures the existence of incentives for entrepreneurs to take risks, for people to work hard, and for the talented to be more productive. Incentives are important in that they work to increase the national pot and so benefit everyone. Moreover, by not redistributing the product of individual choices the CLV guarantees individuals the lives they prefer.²⁹⁶ Thus, as Dworkin claims, 'I show respect for others when I do not appropriate resources that are properly theirs – when I do not exceed my fair share at their expense.'²⁹⁷ Therefore, the form of distribution that LE would necessarily be committed to would be either diachronic equality or diachronic priority, and because so much weight is placed upon individual choice, which is subjective, the egalitarian metric adopted would be either welfare or resources, or perhaps a combination of the two.

²⁹⁶ One criticism of this is that there may be many cases in which gambles are undertaken reluctantly, not because people wish to undertake risk for the sake of risk itself but because those risks are a necessary feature of that choice.

²⁹⁷ Dworkin, *Sovereign Virtue*, p280.

Because Ronald Dworkin is criticised more often than any other alleged luck egalitarian we should briefly outline his theory here and its commitment to the CLV. Whether equality exists between persons on Dworkin's account is determined by what he calls the 'envy test', and this involves the application of a complicated combination of hypothetical insurance markets and auctions in order to determine exactly how such equality could be implemented in as fair a way as possible.²⁹⁸

The envy test for equality of resources is not simply a question of giving each person the same amount of goods, but the requirement that each person be satisfied with the level of goods and resources they end up with. At the same time, each person should take responsibility for how her tastes will be satisfied. A hypothetical auction divides all divisible goods into separate lots and bundles, and each individual can then bid for those goods with an equal initial purchasing power. Because everyone has equal purchasing power the particular bundles of goods they end up with will reflect their level of desire for those goods, so the outcome of the auction is one that satisfies the envy test because no-one would prefer anyone else's bundle.

This is not the full theory because in order to be fair Dworkin wishes to ensure that principles of justice are also endowment-*insensitive*. After all, one is not responsible for the abundance or lack of natural endowments one has: rather it is a matter of brute luck. For a distribution to be endowment-*insensitive* requires society to compensate each individual for shortfalls in their personal resources with a greater level of impersonal resources. To do this Dworkin posits a hypothetical insurance market in which he asks us to think about how much we would ensure against being born with

²⁹⁸ Dworkin, 'What is Equality? Part Two: Equality of Resources.'

handicaps and other natural disadvantages on the assumption that all are equally likely to suffer from that bad brute luck. The distributive pattern justified by this ideal world hypothetical thought experiment would then be replicated in the real world of practice by appropriately arranging taxation and public expenditure policies.

It is the hypothetical insurance market that gives rise to Dworkin's conclusions about the just distribution of healthcare, and I examine this application of his theory and its implications for egalitarian ageism in chapter 6. But, it is important to note here that Dworkin explicitly assumes the CLV and insists that 'we must apply the envy test diachronically'.²⁹⁹ He believes that we should do this in order that no-one should envy the occupation and bundle of resources at the disposal of anyone else over time, even though it is possible that someone may envy another's bundle at a particular time.³⁰⁰

As Dworkin argues,

[I]f we look for envy at particular points in time, then each envies Adrian's resources at the end of the year, and the division is therefore not equal. But if we look at envy differently, as a matter of resources over an entire life, and we include a person's occupation as part of the bundle of goods, then no one envies Adrian's bundle, and the distribution cannot be said to be unequal on that account.³⁰¹

Some people will wish to work hard and accumulate their resources, while others will wish to enjoy more leisure and consequently fewer resources. For this reason it seems fair to suggest that in order for someone to legitimately envy the bundle of resources of another she would also have to envy the level of hard work that the other person had done in order to accumulate those resources. Thus, while person A might envy person B's bundle of goods a year after an initial equal distribution, she could not

²⁹⁹ Ibid, p306.

³⁰⁰ Ibid.

³⁰¹ Ibid, p304.

envy person B's complete life and all the work he has had to do in order to accumulate his final complete life share.

Thus, Dworkin's theory is committed to the CLV as a way of ensuring that individuals are entirely responsible for the success or otherwise of their lives and do not expect others to bear the costs of their choices. But this commitment to the CLV means that equality of resources, or any other form of LE, can be defined as a 'starting-gate' theory, i.e. a theory which provides individuals with equal starting points and then permits them to sink or swim as fortune and their own choices dictate.³⁰² This is so despite the fact that Dworkin himself criticises such theories and distances equality of resources from such a characterisation. Dworkin considers that a starting-gate theory merely 'holds that justice requires equal initial resources but then holds that justice requires laissez faire thereafter'.³⁰³ Dworkin notes the difference between his own theory and his conception of starting-gate theories in that his 'endowment-insensitive' theory requires compensating those with bad brute luck for their disadvantage, and rather than this involving a one-off payment as part of that initial starting point, his metric provides compensatory payments over the course of people's lives.

Nevertheless, because 'equality of resources' also involves an explicit commitment to the CLV it also requires that an equal distributive share (having taken handicaps and

³⁰² This is a criticism levelled at LE by Anderson, 'What is the Point of Equality?', p308. See also Marc Fleurbaey, 'Equality of Resources Revisited,' *Ethics* 113 (2002): 82-105; Richard J. Arneson, Review of *Sovereign Virtue* by Ronald Dworkin, *Ethics* 112 (2002): 367-71. For Dworkin's response to this claim see his 'Sovereign Virtue Revisited,' *Ethics* 113 (2002): 106-143, especially pp113-8.

³⁰³ Dworkin, 'Equality of Resources', p309.

lack of native talents into consideration) of purchasing power between separate persons must necessarily be finite. If each share were not finite then there would be no need to take such care to distribute resources equally. I would argue, therefore, that Dworkin's is a starting-gate theory, though differently defined from his own conception. And this seems to be borne out by Dworkin himself who argues that if two people were blinded within his ideal society, then in principle, and in accordance with the LE maxim, the one who has not purchased insurance does without any state assistance other than what charity might provide.³⁰⁴

However, such a starting gate theory presents another problem, which Dworkin sets aside despite acknowledging it as 'of great theoretical interest and of central practical importance when we come to ask what the requirement of an equal start would mean for the real world.'³⁰⁵ This question involves examining whether and how equality of resources should accommodate the possibilities of people radically changing their minds about the way they wish to live their lives, and whether an individual could be entitled to a fresh stock of resources when he regrets his former life and wants a fresh start. The particular case Dworkin cites is that of 'a profligate who has wasted his initial endowment and now finds himself with less than he needs to provide even for the basic needs in later life'.³⁰⁶ I would agree with Dworkin that the question he raises is of central importance, and I would argue that its consideration draws one to the further question of whether or not we should have a concern for the synchronic well-

³⁰⁴ Ibid, p295. Nevertheless, despite this principle the practical implementation of equality of resources would adopt an averaging assumption, and assumptions would be made as to whether people would rationally insure themselves. Consequently, the sick and disabled would be covered for those illnesses and disabilities that the average person would insure against even if the affected individuals are themselves risk-embracing and would not have insured themselves.

³⁰⁵ Ibid.

³⁰⁶ Ibid, p334.

being of persons at each temporal moment, rather than a diachronic one only. My response, and that of DE, is that we should.

4.6 DE and the anti-ageist challenge to the CLV

Whether the CLV is either explicit or implicit within a distributive theory it will have implications, especially for the elderly, that are intuitively implausible. The goal of diachronic priority or equality would justify the restriction of benefits to the old to such a degree that their basic interests and needs would go unmet. The CLV can logically justify extreme wealth among the young while there is at the same time severe destitution amongst the elderly. Indeed, if the current old, even though now destitute, have had very wealthy lives relative to those that are currently young, and if they are likely to have already enjoyed more benefits in their long lives than the current young and middle aged are *likely* to enjoy in their lives, then the CLV would actually require the destitute old to transfer some of their remaining resources to the wealthy young.

These implications are particularly significant in light of the generational equity debate discussed in chapter one (section 1.3.ii). It is claimed by some that those who are currently old are now enjoying more than their fair share of benefits and may seek to justify moves to restrict the benefits available to that age group from the principle of fairness. The old are seen to be better off not just than previous generations of the old, and not just better off than the younger age-groups of today, but that they are also better off than the next generation of the old can hope to be. If such is the case, then the CLV as a principle is not currently being respected. Moreover, if the CLV is

morally sound then society ought to restrict the benefits enjoyed by the current old. The strict egalitarian version of the CLV principle would in fact go further than the advocates of generational equity and actually require this restriction of benefits from the old *even if those benefits could not be redistributed to the young*. The reason for this is simply that greater complete life equality would be achieved by that restriction.

The anti-ageist principle would challenge the CLV because it requires that the old always have sufficient benefits to enable them to enjoy a reasonably decent old age irrespective of their complete life shares. As we have seen in chapter 2, each individual has both synchronic and diachronic interests that are not reducible to one another. This means that we cannot give sufficient concern to a person's synchronic interests merely by securing individuals a 'fair' lifetime share of benefits sufficient for their diachronic interests. And because each person has the same synchronic interests that demand equal treatment, irrespective of their age, society has a strong reason to limit discrimination on the basis of age alone.³⁰⁷

Now we might ask how this theory of moral psychology challenges the CLV of distribution. Surely a pattern of material distribution may be just irrespective of its net effects on synchronic well-being? However, if this theory of moral psychology is sound then it gives us a reason to suppose that a distributive scheme would be incomplete, and so inadequately just, if it gave exclusive concern to the CLV at the expense of the synchronic interests of persons. Rather it gives us a reason to develop a distributive scheme that gave concern to the quality of both the diachronic and

³⁰⁷ This is a *pro tanto* claim against age discrimination. To the extent that we have a reason to attend to the synchronic interests of persons society cannot legitimately discriminate purely on the basis of age.

synchronic aspects of individual well-being. Moreover, this moral psychology has implications for Rawlsian type contractualism, which is to say theories that involve the idea that just principles of distribution are those that would be chosen by representative individuals behind a veil of ignorance. If such prudent agents deliberated while aware of the divided nature of their self-interest, and also realised that they would have to abide by the *strains of commitment* once those principles were put in to effect, then it would not be absurd to suggest that they would give some concern to the quality of their synchronic interests rather than to give exclusive concern to the just distribution across their complete lives. Moreover, it would not be absurd for an individual to distribute resources within his own life in such a way that would prioritise one temporal period when he was likely to be worst off, and that it would be prudent to do this even if it was at the expense of the total level of benefits he would enjoy over his complete life. Thus, what we need is a distribution that does not give exclusive concern to the CLV.

In support of this conclusion we can examine two examples that Mckerlie gives when it would seem morally more plausible to be concerned about the synchronic interests of the old irrespective of the complete life shares of benefits that people enjoy. In the first example, Mckerlie believes we would prefer to help an old person who is very badly off rather than someone younger and better off, irrespective of their complete life shares, even if it is clear that the actual benefit for the older person's well-being would be smaller than the benefit to that of the younger person. This would represent the pure application of the principle that we should give synchronic priority to the worst off individual or group. If one person is presently fairly well off it would seem odd that we should prefer to give him a larger benefit than to give a poorer person a

smaller benefit? The reason it would seem odd must partly be explained by the idea that we can identify with the synchronic interests of the older person who is now in greater need. Moreover, it might seem prudent for rational deliberators behind a veil of ignorance to ensure that our principles of justice would assist those in greatest need at any temporal moment irrespective of complete life shares.

In a second example, Mckerlie argues that we would prefer to help an old person who is very badly off rather than a younger person who is badly off, yet not as badly off, even though the older person had already consumed more resources than the younger person is likely to do in his life. When we are dealing with morally urgent claims of justice it does seem plausible that we would not be primarily concerned with the total level of benefits someone has or is likely to enjoy over their complete lives. As noted above. Parfit argued that it is likely that those whose needs are morally more urgent are also those who are worse off within any temporal moment, which is to say those who are synchronically worse off. McKerlie's examples thus provide intuitive plausibility to the idea that a distribution should not be exclusively diachronic, and this is obviously at odds with a CLV.

This anti-ageist rejection of the CLV is wholly compatible with the position of DE. My claim is that DE also rejects the CLV, and this claim is evident when we look again at what motivates democratic egalitarians and their criticisms of LE. We noted five objections to the LE position in section 4.1, and four of them are relevant to a critique of the CLV.³⁰⁸ Firstly, democratic egalitarians reject the idea that a fair

³⁰⁸ The third objection to LE, that the LE conception of fairness is not a refined version of Rawls' 'difference principle', examined in chapter 6.3(V).

distribution is the only (or even the most) important value within egalitarianism. A fundamental premise of DE is rather that the social relations that exist between citizens are the most important feature, and that the distributive pattern an egalitarian theory adopts is justified to the extent that it creates and maintains such equal relations. If an equal distribution is not fundamental for DE then neither is the CLV, but because the CLV will actually tend to create unequal social relations DE in fact rejects it.

The second DE criticism of LE is that the distinction between choice and circumstance is not always morally plausible. Indeed, DEs are motivated by the idea that we should sometimes give assistance even to those who have been partly responsible for their desperate position. Those with needs that are morally more urgent at each temporal moment will have a claim on the rest of society to provide them with the means to fulfil their fundamental interests. This DE commitment to synchronic well-being would necessarily violate the CLV.

Another DE criticism is that LE is not incompatible with a social hierarchy or the continued existence of moral prejudice. This is to say that we could equalise benefits between the complete lives of separate persons without challenging these two phenomena. But it is a fundamental goal of DE and its ideal of achieving equal social relations that social hierarchies and prejudice be challenged, and, at best, the CLV is superfluous to this normative goal. Finally, DE objects that the lexical priority that LE gives to its conception of fairness (embodied in the LE maxim) conflicts with ideas about the value of respect, and it is a normative goal of DE to balance these two

values. As noted, LE subordinates respect in pursuit of diachronic fairness, itself grounded on the CLV, and this is another reason for rejecting the CLV.

What this analysis shows is that DE and the anti-ageist principle are entirely compatible, and we can conclude that anti-ageists should adopt DE as a general philosophical position from which to consistently challenge all forms of wrongful age discrimination.

4.8 Concluding remarks

This chapter has argued that any exclusive concern to ensure diachronic equality of material distribution between persons will lead to a justification of age discrimination in old age. The chapter has also claimed that such an exclusive concern for diachronic equality is prevalent within much contemporary egalitarian theory, particularly that of LE. In contrast I have noted the emergence of DE, and have outlined how the concern this concept has that social relations between citizens be equal would actively challenge the ageism accepted by LE. From the normative ideal that individuals should have equal social relations it would be morally wrong to discriminate solely on the basis of age, because such discrimination would inevitably involve relations of inequality between citizens.

By drawing on the three premises of DE set out at the end of section 4.1 we see that DE would present three arguments against age discrimination. Firstly, if the synchronic needs of the elderly are neglected while the needs of others are not then the resulting situation would involve relations of social inequality, and, as we have

seen, social equality is a concept often thought to be theoretically prior to distributive equality. Secondly, as Hinton and Wolff have argued, LE principles of fairness often disregard the moral importance of protecting the self-respect of citizens, and discrimination on the basis of age alone can be expected to be detrimental to the self-respect of the elderly. DE, on the other hand, would seek to balance both values. Thirdly, by neglecting the basic needs of older citizens we would reinforce the cultural ageist assumption that the value of the lives of old people is inferior to that of younger people. The social ideal of DE would therefore recognise that the age discrimination justified by the distributive ideal of LE as extrinsically morally wrong.

Within this chapter I have also noted that while social equality does not in itself determine a specific distributive system it does have distributive implications, and in chapter 7 I outline the system that Anderson's DE view envisages. Anderson's view incorporates the capabilities metric and, therefore, one of my central claims is that DE would defend the anti-ageist ethic because it does not embrace an exclusive concern for the diachronic CLV. However, before we can examine the possibility of an economic distribution that does not focus exclusively on diachronic equality we first need to examine the alternatives and this is the subject of the next chapter.

Chapter Five: Ageism and the unit of egalitarian concern

The purpose of this chapter is to examine various understandings of the unit of egalitarian concern found within contemporary political theories, from the CLV to the 'fair innings argument' (FIA), to the quality life year (QALY), and finally to synchronic alternatives. Analysis of these units suggest that an exclusive concern for any of them will have implausible consequences, and the only morally plausible view is a hybrid unit which combines both a concern for the complete life share of benefits a person has as well as a synchronic concern for the well-being they experience at a time. The problem for political philosophy is that such a hybrid unit of concern can not be easily formulated within distributive justice. Nevertheless, it will be my argument in chapter 7 that the intuition that lies behind this hybrid view, that concern should be given to both diachronic and synchronic, can be better expressed within democratic equality and the principle that we should equalise social relations rather than distribution.

5.1 A 'fair innings' or a complete life?

Both the consequences of the CLV and the 'fair innings argument' (FIA) are examples of egalitarian ageism, because although they do not involve culturally oppressive stereotypes, (and so are not intrinsically wrong) they nevertheless justify discriminating against the old in ways that may neglect or thwart their synchronic interests. The question in this section is whether the 'fair innings' argument (FIA), briefly outlined in chapter 1 (1.3.i), and the CLV are one and the same principle or

not.³⁰⁹ This comparison between the two views tells us more about the implications of each as well as the ways in which their respective implications are either similar or different. The comparison will also make apparent some of the ambiguity as to exactly what it is that the FIA justifies.

In its simplest form the FIA provides a reason for preferring to help one person rather than another when both need the same treatment in order to survive, but where scarcity dictates that only one can be saved. The intuition behind the FIA is that it is better to have lived a longer than a shorter lifetime, and so where two people are significantly different in age we should choose to assist the younger person before the older. Thus, a definition of the FIA would be the following;

The FIA – that people who had achieved old age or who were closely approaching it would not have their lives further prolonged when this could only be achieved at the cost of the lives of those who were not nearing old age.³¹⁰

We can compare this definition of the FIA with the definition of the CLV I have been using;

The CLV – that different people's share of resources, or welfare, should be equal when we consider the total amounts of these things that they receive over the complete course of their lives.³¹¹

It is immediately apparent that there are some strong similarities between the two views, and it would seem reasonable to suggest that we could in fact support both

³⁰⁹ I will leave aside until chapter 6 the fact that the CLV is in practice normally combined with a prudential analogy before it is able to determine the just distribution of public goods such as healthcare.

³¹⁰ John Harris, *The Value of Life: An Introduction to Medical Ethics* (London & New York: Routledge, 1985), pp93-94.

³¹¹ Dennis McKerlie, 'Equality and Time,' *Ethics* 99 (1989): 492-502, p476.

principles. Ronald Dworkin, for example, as we have seen above, is committed to the CLV, but he also implicitly endorses the justice of the FIA when he outlines his ‘frustration thesis’: the ‘instinctive assumption’ of which is that it is a greater tragedy when a young person dies than when an old one dies.³¹²

Both views are concerned about the distribution of some good, and both would seem to be strongly normatively egalitarian. They both hold that if there is something to be distributed then ideally it should be distributed fairly, which is usually taken to mean as equally as possible. The CLV, of course, concerns the distribution of either resources or welfare, and these goods can be understood as the *means* to an *end*, the end being to live as good a complete life as possible. They are means rather than ends because it is not these means that is thought to be of intrinsic importance. The FIA, on the other hand, may be interpreted in either one of two ways. It may be a view about the distribution of the means to ensure a ‘fair’ duration of life, in which case it would be a view concerning the means to an end in a similar way to the CLV. The only difference in this case perhaps would be that the means would be specifically limited to health-care and medical resources. Understood in this way, the FIA only becomes relevant in circumstances of scarcity where only one of two persons can be saved with the limited resources available.³¹³

On the other hand, however, the FIA may be interpreted as being concerned about the end itself, and so be concerned to ensure that each person has a fair or an equal share

³¹² Ronald Dworkin, *Life's Dominion: An Argument About Abortion and Euthanasia* (London: HarperCollinsPublishers, 1993), p88.

³¹³ The CLV is also relevant only in conditions of scarcity, but that is a feature of social justice generally.

of life itself. A certain lifespan would be determined as 'fair', say 75 years, and resources would be distributed in such a way as to ensure that everyone reached that age. It is in this way that I believe Oliver Leaman interprets the FIA.

There are interesting consequences to [this interpretation of] the 'fair innings argument'. One is that it involves an extreme form of egalitarianism. The fact that someone lives longer than someone else is regarded as patently unfair, and it is just to seek to equalize as far as possible the life spans of different individuals.³¹⁴

As Leaman recognises, this more extreme version of the FIA has somewhat implausible implications. If the FIA is a normative principle that each of us should have equal life spans, then just as it is 'unfair' that some people die young, so too would it be unfair that some people live longer than their fair share. And something should be done to correct this unfairness, perhaps through a policy of enforced euthanasia for all those who have lived beyond the socially determined 'fair' innings.³¹⁵

The first interpretation of the FIA identified here, that which identifies it with a view about means rather than ends, does not suffer from this morally implausible implication and it would remain silent concerning the actual life spans that different people achieved above the fair innings. It is silent on this because the view does not concern itself directly with distributing the ends, only of means. Once the health care and medical resources had been directed to ensure everyone had an equal opportunity

³¹⁴ Oliver Leaman, 'Justifying Ageism', in A. Harry Lesser (ed.), *Ageing, Autonomy and Resources*, (Aldershot: Ashgate, 1999), p182.

³¹⁵ It might be possible to make a further distinction here between a telic and a deontic version of the extreme FIA view concerning ends. The telic view is the one that Leaman seems to assume, that the FIA actually requires us to prevent, or redistribute life beyond the fair innings. The deontic view, on the other hand, would claim that life beyond the fair innings would be unjust only if we brought it about. A natural inequality of length of life on this latter view would not be unjust, and while it is similar to the FIA concerning means, it does not concern itself with welfare or resources to do this.

to reach the fair innings the actual innings people enjoyed is left unchallenged. In this respect the means interpretation of the FIA is similar to the CLV of resources rather than the CLV of welfare. Once the resources have been equally distributed the actual levels of welfare that individuals enjoy is independent, even though resource egalitarians will usually accept that welfare is the intrinsic end for which the distribution of the means is the motivation.

To complicate the issue further, the distinction between whether the FIA distributes means or ends is not the only distinction that can be made. Just as with the CLV, the FIA, as the unit of egalitarian concern, may be interpreted in terms of a distributive principle of strict equality, priority or sufficiency. As indicated above, Leaman interprets the FIA to involve 'an extreme form of egalitarianism' which implies that its underlying normative principle is that we should each have the same length of life. Arguably, an ideal world in which everyone had the same length of life would be fairer than one in which everyone lived to the fair innings but some lived much longer. Such an ideal world of equal life-spans would also be administratively more efficient because we would then be able to allocate exactly the right amount of resources for each life. However, this ideal is not morally plausible because most people would not find it desirable to know exactly how long they had to live. Arguably what gives life much of its meaning and enjoyment is the very uncertainty of its duration, and if we each knew we had an equal life span then as we neared the end of the innings we would become increasingly worried and distracted from the important things in life. Moreover, such a strict egalitarian view of the FIA would be subject to the objection that it was committed to 'levelling down' the goods being distributed. If inequality is intrinsically bad and the goods being distributed was life

itself, then Leaman would be right in thinking that the FIA would inherently require an older person being obliged to give up her remaining years simply because she was older.³¹⁶ Therefore, if the underlying normative principle of the strict egalitarian version of the FIA is the ideal that our lives should be of equal length, then the view is not plausible.

However, Leaman's interpretation is not a necessary one inherent to the FIA, and an alternative interpretation might be the prioritarian fair innings view. This view would state that where there were two people who needed the same resource to survive, and one person was already approaching 'old age' and the other was not, that we should distribute medical resources in such a way as to prioritise the plight of the younger person. But by itself the prioritarian version is also implausible because it merely suggests prioritising the younger person and we would then find ourselves supporting the idea that it is better to save a 30 year old than the 40year old. Harris finds such a choice invidious because neither person has had their fair innings.³¹⁷ What is also required, then, is some decision about exactly what length of life is 'fair', which can of course only be arbitrary. Thus, we might more plausibly think of the FIA as a combination of a prioritarian and a sufficiency view: the view that people should, as far as possible, be guaranteed a minimum length of life, and that society should prioritise those who have so far not enjoyed that sufficiency at the expense of those who have.³¹⁸ This combined view of the FIA would not be subject to the more

³¹⁶ Leaman, 'Justifying Ageism,' p184.

³¹⁷ Harris, *The Value of Life*, p93.

³¹⁸ We should note that this description of the FIA is only appropriate in pair wise situations where we are deciding to treat either a 75 year old or a younger person; i.e. that we aim to assist everyone under the fair innings, and not simply the greatest number. The idea that we should minimise the number who fall below the fair innings is implausible. For instance, if 75 was defined as the fair innings then suppose we have ten 73 year-olds who need an operation to get to 75. With those resources we could

obvious criticisms outlined above, though it may still be found flawed for other reasons.

We can therefore think of the most plausible interpretation of the FIA as being a view that is concerned about means (resources) rather than the ends (life itself), and a view that is guided by a principle of priority constrained by a sufficiency minimum (a threshold length of life that is deemed fair). However, although both this formulation of the FIA and the CLV might be views about the distribution of resources, and both views would condone the restricting of at least some resources from the old in preference for the young, the two views will nevertheless have different implications for that distribution. The reason for this difference is that while personal responsibility is a principle that is both presupposed and encouraged by the CLV, it is a principle that is completely ignored by the unrefined FIA (I examine and reject the possibility of a refined version of the FIA that includes a concern for responsibility in the next section). The CLV requires us to distribute resources fairly so that each person has a relatively equal share over the course of their complete lives, and this means that the more prudent they are with those resources the longer they will last.

The FIA distributes resources in such a way as to ensure that people have as fair an innings as possible, but this commonly raises two criticisms. Firstly, in criticism of the FIA it has often been argued that some of the elderly who have perhaps lived hard lives when they were young may have had much less of the enjoyable part of their lives than some younger people, and could claim in a real sense that they have not yet

ensure that five 20 year-olds get a fair innings. On the minimisation of unfair innings we would treat the ten, but most people might find this policy wrong.

‘had their life’ or ‘their fair share’.³¹⁹ The second criticism is that from the perspective of the FIA it is irrelevant how irresponsible a younger person might have been as regards to their health status or how prudent an older person has been. The younger person may have smoked and drank heavily, had a poor diet and taken no exercise while the older person has lived healthily, but the FIA will nevertheless penalise the prudent older person. A comparison with the CLV, illustrated in the diagram below expresses these two criticisms of the FIA.

We can use the diagram first to imagine two persons, A and B living simultaneously at T4 and both in need of a medical resource to prolong their lives, but which, due to circumstances of scarcity, only one can have. In this instance the numbers indicate the quantity of resources that each person has spent or has had spent on them at each temporal period. Person A is only half the age of B but although he is only now coming towards the end of his youth he has used a great deal more resources in his short life than B has in her long life. Person B may nevertheless have another couple of decades of life if she is given the medical resource they both need for survival.

	T1	T2	T3	T4	T5	T6
A	-	-	(C) 100	(Y) 150	-	-
B	(C) 50	(Y) 50	(M) 50	(O) 50	-	-

(C) Childhood
 (Y) Youth
 (M) Middle-age
 (O) Old age
 (VO) Very old

³¹⁹ Harry Lesser, ‘Ageism,’ in *Encyclopedia of Applied Ethics, Volume 1* (Academic Press, 1998), p93.

As far as the FIA is concerned the person who has either achieved or is approaching old age should not have her life further prolonged when this could only be achieved at the cost of those who are not nearing old age. Thus, on the view of the FIA, person A would be saved and B would be sacrificed, even though his complete life share of resources will be far greater, simply because he is not yet nearing old age. On the CLV, however, the shares of resources that people enjoy over the course of their lives should be equal. And, as person B has enjoyed significantly less than A, any further resources should be channelled towards B rather than A.³²⁰ The CLV takes in to consideration the past resources that each person has enjoyed while the FIA only counts life time. From the CLV the case might be further strengthened in favour of B if we were to project the resources that each person is likely to enjoy in the next temporal segment, which is to say in T5. The possibility that A might consume any more resources means that the complete life inequality between the two people would be widened further, and this would be unacceptable.

The second criticism of the FIA, that it penalises individual responsibility, might also be shown by this diagram if we take the numbers for both A and B at each temporal stage as the level of unhealthy living they have each subjected their bodies to. If we imagine that the higher the number the more unhealthy the lifestyle (the more cigarettes they have smoked, alcohol they have drunk, saturated fat they have eaten, and the less exercise taken) then again we can see that person A has been far less responsible than B, but again this is irrelevant from the perspective of the FIA. Any available resources will be directed towards the irresponsible person A to keep him

³²⁰ This is assuming that life itself is not counted as a resource within the CLV, which arguably it ought to be. Nevertheless, neither Temkin or Mckerlie, or those who have appealed to the CLV, have done so.

alive as long as possible to ensure he reaches a fair innings, and the fact that B has taken care of her health throughout her life counts for nothing.

A third common criticism of the FIA is that the old have in fact earned a right to be treated before the young because they will have paid more in national insurance contributions over their lives, and have thus contributed toward both their own old age and those who were members of the old age group before them. Again the FIA is unconcerned by this previous investment. However, the issue would be addressed by the CLV, but only when combined with a prudential analogy (PA) to determine what justice requires society to spend on the well-being of its citizens at the various stages of their lives. Without a PA, the CLV by itself would merely indicate that if someone, like Person B in the above example, distributed their resources in a prudent way over the temporal stages of their lives, then until they had used up those resources, they would always be entitled to further claims irrespective of their age. The view does not concern itself with the option luck of individuals, which is to say the investment decisions and the level of economic productivity that those individuals engage in. If someone starts out with an equal complete life of resources and then invests them carefully, adding to that investment from the income they create through their working life, then they will be able to buy significantly more benefits in old age than if they had been profligate.

The prudential analogy is an analogy made between how one rational individual, in possession of the general facts of her society's level of wealth, the average life expectancy, and the relevant facts of tendency to disease and accidents, would invest of her equal share of complete life resources to pay for insurance against the

eventuality that they should suffer such disease or accident. It is therefore to this extension of the CLV that we must turn to seek an alternative answer to that of the FIA with respect to the third criticism identified above. This I do in chapter 6 where I examine the prudential analogies of Ronald Dworkin and Norman Daniels.

However, if the FIA was to be used on a societal rather than an individual scale to determine which life-extending treatments should be made available to which citizens, then the public policies that it prescribed would not be that much different from a combination of the CLV and the prudential analogy (PA). The reason for this is that as soon as the CLV is combined with the PA and used on a societal scale, it changes its prescriptions for individuals, while the FIA does not. The FIA would support age discrimination in the provision of life-extending treatments both on an individual level and a collective level, because those people denied treatments will have been deemed to have already had a good innings. The CLV in combination with a PA would also support age discrimination in the provision of life-extending treatments on the basis that in aggregate terms, society will already have spent the equivalent complete life resources that an individual would have been provided with, and the level of resources that a rational individual would have insured themselves against. In public policy terms, therefore, the practical implications of the FIA on the one hand and the combined CLV and prudential analogy on the other would be quite similar.

5.2 The 'responsibility-constrained FIA' as a 'tiebreaker'

Rather than using the FIA as a policy by itself, it might instead be qualified and be used only in cases where a decision must be made between two people where both are equal in every way in respect of their deservingness. As Kappel and Sandoe argue, this is the claim 'that *other things being equal* it is fair to use age as a direct criterion in the distribution of vital health care resources'.³²¹ Within this idea of equal deservingness we could include the level of personal responsibility shown by individuals for their own health. If they were equally deserving then responsibility would not be an issue, because if equally deserving they would have been equally responsible. Alternatively, where two people, one older than the other, have been equally responsible for their health (always supposing such a test could be made), the younger one would be saved. Therefore, in the last example, the FIA would simply not apply because the two persons in question are not equally responsible. The younger person has been very irresponsible and the refined responsibility-constrained FIA would consequently be redundant.

But let us imagine that two people have been equally responsible for their health over the whole duration of their lives, but that one person is significantly younger than the other. Further, let us also assume the prioritarian version of the FIA constrained by a sufficiency minimum set at 75, and let us assume further that person A is now 75 years old. We must now determine which of the two should receive the treatment at

³²¹ K. Kappel & P. Sandoe, 'Saving the Young before the Old – A Reply to John Harris,' *Bioethics* 8 (1994): 84-92 (*italics added*).

T5 that would permit A to live another 15 years and B another 30 years (imagine each time segment represents a 15 year time period).

	T1	T2	T3	T4	T5	T6
Person A	10	10	10	10	10	
Person B	-	-	10	10	10	

If we imagine that the figures represent the level of personal responsibility shown by an individual, then on the face of it both individuals have shown an equal level of responsibility within each temporal segment of their lives. In this instance the tie-breaker version of the FIA would suggest that person B should be saved before person A because she is equally responsible but younger. However, it could be argued that in fact we should view the older person as the more responsible because he has been responsible for a significantly longer period of time. Moreover, the younger person might receive the necessary treatment at T5 and then immediately become dissolute. If so then by the time she reached the same age as the disfavoured older person she could certainly not be said to have been as equally responsible for her health as person A. We can see the force of this argument in the table below.

	T1	T2	T3	T4	T5	T6
A	10	10	10	10		
B	-	-	10	10	5	5

At T6 person B has been markedly less responsible than person A was at T4, and in the event that we could turn back the clock it would seem better had we provided the

latter with the life saving treatment on the basis that over his complete life he would have been more responsible than person B. It may be, therefore, that if to be equally deserving involved being equally responsible, then we could only decide between two people if they were of equal age, and so had been as equally deserving / responsible for as long. Of course in such a case the FIA would be redundant anyway because both would have enjoyed an equal innings. We can say, therefore, that the responsibility constrained tie-breaking FIA is flawed.

5.3 Daniel Callahan and the FIA

One notable advocate of the FIA is Daniel Callahan, whose book *Setting Limits*³²² outlined a defence of age discrimination in healthcare based upon the premise that the old should willingly give up access to life-extending medical treatments so that the young might have the greatest opportunity of becoming old. He argues that ‘There is nothing unfair about using age as a [discriminatory] category if the purpose of doing so is to achieve equity between generations.’³²³

However, on the first reading it may be difficult to determine whether Callahan is appealing to a CLV or the FIA. For example, he appears to be defending the CLV when he argues that beyond a certain point in their lives elderly people ‘will have already had their fair share of resources’,³²⁴ and will not be entitled to any more resources on grounds of fairness. On the other hand, he appears to defend the FIA

³²² Daniel Callahan, *Setting Limits: Medical Goals in an Ageing Society* (Simon & Schuster, 1987).

³²³ Ibid, p140.

³²⁴ Ibid.

when he proposes that '[a]fter a person has lived out a natural life span, medical care should no longer be orientated to resisting death', and that it would henceforth 'be limited to the relief of suffering'.³²⁵ As we have seen in the last section, though, these two claims may conflict, and a 'fair share of resources' may not be exhausted by the time a 'person has lived out a natural life span'. Nevertheless, on balance the FIA has more relevance to Callahan's arguments which means that in effect it would not matter what level of medical resources someone had used before reaching the end of their natural life span as long as they did not use any after that point.

Callahan defines a natural span as 'one in which life's possibilities have on the whole been achieved, and after which death may be understood as a sad but nonetheless acceptable event'.³²⁶ He then uses the concept of a 'tolerable death' to denote a point at which one's life possibilities had on the whole been accomplished; one's moral obligations to those whom one had responsibilities had been largely discharged; and one's death will not seem to others as an 'offence to sense and sensibility'.³²⁷

The primary reason for Callahan's adoption of a version of the FIA is to ensure intergenerational justice, because the resources saved from denying life-extending treatment to the old could then be redirected to saving the young. Nevertheless, quite apart from the philosophical doubts one might have about the FIA itself, the justification he uses might be misplaced for practical reasons. The question must be

³²⁵ Ibid, 171-173.

³²⁶ Ibid, p66.

³²⁷ Ibid. It should be noted that Daniels does set certain necessary pre-conditions that must obtain before such age discrimination would be justified; that there be universal access to healthcare (absent in the US); that home care and long-term care be strengthened for the elderly; and that a period of 20 to 30 years would need to pass in which people's attitudes could be changed to accept this.

whether sufficient resources can be saved under this regime, and evidence suggests it would not. For example, Levensky has shown that the amount that society actually spends on technologically advanced medical treatment for the old is a relatively small percentage of the total.³²⁸ And as Grimley Evans argues, '[I]f patterns of practice and costs remain as at present the main financial impact of ageing in the UK will fall on the long-term care sector rather than on acute secondary or primary care.'³²⁹

This would suggest that simply denying life-extending medical treatment to the old would not be sufficient to make a significant enough saving for it to be justified as Callahan suggests. Unless the FIA was enforced more ruthlessly, and the old denied long-term care as well as every other form of medical treatment, there seems little practical point in its adoption. Indeed, to pursue the FIA in such an instance where the practical benefits are shown to be negligible would seem to be unnecessarily and arbitrarily harsh, even uncivilised. This significantly undermines Callahan's primary justification of the FIA within his theory.

5.4 Utilitarianism and the QALY

The concept of the quality adjusted life year (QALY) has had much appeal for more than two decades now, but, unlike the other methods of resource allocation examined in this thesis, it has less to do with fairness than with efficiency. Nevertheless, like the FIA and the CLV, the QALY has often been described as inherently ageist, and we

³²⁸ N.G. Levensky, 'Age as a criterion for rationing health care', *New England Journal of Medicine* 322 (1990): 1813-15.

³²⁹ J. Grimley Evans, 'A correct compassion: The medical response to an ageing society. The Harveian Oration of 1997', *Journal of the Royal College of Physicians of London* 31 (1997): 674-84, p675.

would therefore not be thorough in our analysis of defences of ageism without a comparison of the QALY with the CLV and FIA.

The QALY methodology determines the value of treatment by considering three things: the cost of a treatment; the resulting quality of life; and the number of years gained by the use of that treatment. The approach therefore takes account of both the quality and quantity of life that might be produced by a particular medical treatment as well as its cost, and it is based on the implicit assumptions that there is a rational way of trading one off against the others. Each given treatment is assigned a value corresponding to the number of quality life years such a patient can look forward to with the treatment minus the number of QALYs the patient would have if left untreated. One then calculates what each QALY gained by these means actually costs.³³⁰ Alan Williams, one of the originators of the approach, writes that '[t]he general idea is that a beneficial healthcare activity is one that generates a positive amount of QALYs, and that an efficient healthcare activity is one where the cost of QALY is low, and a low priority activity is one where cost per QALY is high.'³³¹

QALYs may either be used at a macro level to determine which treatments should be offered within a healthcare system (i.e. those that produce most QALYs), or else, perhaps more perniciously, at a micro level as a way of selecting the suitable patients to undergo certain treatments (i.e. those most likely to benefit in terms of QALYs produced). In chapter one I noted that doctors in the healthcare system, as well as the

³³⁰ Arguably QALYs do not need to have exact numerical values ascribed to each treatment because ordinal conclusions can be made along the lines of what outcomes people would intuitively calculate as better than others.

³³¹ Alan Williams, 'The Value of QALYs,' *Health and Social Service Journal* (18 July 1985), p3.

ordinary layman, often in fact make these sorts of comparative judgements between patients and treatments, and what the QALY approach arguably does is to simply make the decision process more explicit and democratic.

One of the supposed moral attributes of the approach is that it can be said to be impartial in its application. Williams suggests that QALYs involve the idea that ‘one year of healthy life is of equal value *no matter who gets it*’, and that each person’s benefit is given equal weight.³³² The principle that what matters is life itself irrespective of who experiences it indicates an important structural aspect of the approach, which is very similar to utilitarianism. Alan Cribb claims that the approach represents ‘a new arithmetic of happiness or felicific calculus in a way that enables us to spend the healthcare budget in a way that maximises welfare’.³³³ However, although the QALY has similarities to the felicific calculus it is not a purely utilitarian metric. Rather, the QALY is a welfarist metric, where the welfarist aim is ‘that we should so act as to maximise aggregate benefit’.³³⁴ Classical utilitarianism is a particular form of welfarism characterised by the equation of benefit with happiness, which is an equation the QALY is not committed to. Rather, the benefit is equated with the number and quality of years to be lived.

Now there are a number of criticisms that have been levelled at the QALY approach, many of which challenge the implicit assumptions underlying the acceptance of the QALY concept. Firstly, the QALY is similar to the utilitarian method in as much as

³³² Ibid, p5 (emphasis added).

³³³ Alan Cribb, ‘The felicific calculus strikes back,’ in A Harry Lesser (ed.), *Ageing, Autonomy and Resources* (Aldershot: Ashgate, 1999).

³³⁴ Amartya Sen, ‘Utilitarianism and Welfarism,’ *Journal of Philosophy* 70 (1979).

what counts as important is a common denominator between people, and all benefits of welfare are thought to be measurable in this common value. For both utilitarianism and the QALY approach it is not individual persons that are the focus of egalitarian concern, rather it is units of utility or quality time respectively. This leads to the morally dubious position that there is no moral difference between whether 30 people are provided with one QALY each, or that one person is provided with thirty QALYs. As far as the approach is concerned each individual is entitled to equal consideration: that their QALY index counts for the same as everyone else's. However, individuals do not have any prior entitlement to anything more substantive than that, and in this way it is different from the CLV and the FIA, both of which accept that individuals are entitled to an *equal share* of something, either of life itself, or of welfare or resources sufficient for a complete life.

Moreover, critics of both utilitarianism and QALYs claim that it is impossible that any and every benefit enjoyed by different people in different circumstances with different values, outlooks and conceptions of the good, can be measured in the same units. In fact, even for resource allocation within healthcare there may be qualitatively different kinds of benefits that cannot be meaningfully compared in terms of amounts or intensities of some other generalised benefits. As Cribb argues, because any state of affairs will be differently valued by different people their values are incommensurable, and this makes comparative evaluation of the outcomes impossible.³³⁵

³³⁵ Cribb, 'The felicific calculus strikes back,' p189-190.

Even when we try to make the valuations ourselves about the quality of our own lives under possible future circumstances there is no way to be sure we are right. Michael Lockwood for instance argues that faced with the sort of comparison that the QALY approach requires, 'most people ... would say this sort of thing: "Well, a year of normal life would certainly, for me, be worth at least eighteen months of life paralysed from the waist down, but wouldn't be worth 3 years under those conditions".'³³⁶ But how would Lockwood or anyone else know how much each individual actually synchronically values their lives until they themselves are in the actual position to experience it under those conditions? Indeed, becoming paralysed may be a life-changing experience that alters one's perception of what is meaningful in life, and in any case people very often learn to adjust their lives to compensate for the loss of such a capacity and continue to live as full lives as before. Thus, Lockwood's assumption would manifest a 'tyranny of the fit and healthy', particularly of the younger self over one's own later, less healthy self. And to assume the former should determine the value of the latter is also to invite the influence of negative cultural stereotypes.

The second criticism of the QALY approach is that third parties must make these decisions about the quality of life that one enjoys under certain circumstances, to put numerical values on that quality, and to trade these values off one against the another. The problem is that not only are those values incommensurable, but that third parties are likely to measure such values from their own subjective standpoint. Thus the

³³⁶ Michael Lockwood, 'Quality of Life and Resource Allocation,' in J.M. Bell & S. Mendus (eds.), *Philosophy and Medical Welfare* (Cambridge: Cambridge University Press, 1988), p40.

QALY involves a third party, or proxy, deciding the potential quality of your future life.

The third criticism is that this subjective analysis by third parties is likely to lead to age discrimination. If we want to maximise QALYs given a fixed set of costs, which of course not all those who use QALYs wish to do, then the young will in general be favoured over the old. This is not because of some moral bias against older people, but because there is an objective average difference in life expectancies between the young and old. Although the impartiality of QALYs is thought to be a significant moral advantage by its advocates, it is this very impartiality that often manifests in discriminatory policies in practice. QALYs are not *intrinsically* ageist because they do not seek to discriminate against the old, and in some circumstances they might in fact work in favour of the old and against the interests of the young.³³⁷ Nevertheless, because what matters to the approach is the number of quality life years that individuals enjoy after their treatment, the method will implicitly work against those with less life expectancy. Thus, Harris argues that although QALYs are impartial in abstract terms, they are nevertheless de facto ageist:

It is true that QALYs dictate that we prefer not simply those who have *more life expectancy* but rather those who have *more life expectancy to be gained from treatment*. But wherever treatment helps postpone death ... it will, other things being equal, be the case that younger people have more life expectancy to gain from treatment than do older people.³³⁸

³³⁷ An example would be a choice between a procedure that treated a condition affecting mainly older people at a low cost per QALY over one that treated a condition affecting mainly younger people at a high cost per QALY.

³³⁸ Harris, p79-80. In contrast to Harris' concerns, Lockwood argues that while QALYs are not actually ageist, that in fact they should be. The very fact that they are not ageist seems to him to be an objection to unconstrained QALY maximisation, and he claims that it 'fails to be ageist when it should be, rather than being ageist when it should not' (Lockwood, p54). Because Lockwood finds the FIA compelling he believes that QALY maximisation should be constrained by that principle rather than one that is anti-ageist, and that we should always ensure that the QALY approach favours the young over the old.

Nevertheless, Harry Moody also points out that a vague quality of life standard could easily become a covert form of discrimination where 'quality of life' surreptitiously becomes tantamount to 'worth of life'.³³⁹ Therefore, as Jones and Higgs argue, the supposedly objective methods of economic evaluations of ascribing a numerical value to a life can often in fact contain hidden value judgements,³⁴⁰ and it has been argued that age based rationing based on such cost-benefit analysis does in practice involve an implicit and covert form of age-discrimination.³⁴¹ There are of course various ways in which we might measure the quality of someone's life, but what commentators like John Vincent claim is that exclusive concern is too often given to the quantitative assumption that the number of life years left to live is what is paramount, and that the converse assumption, that the more years lived the more valuable are the successive years, is not made.³⁴²

The fourth, and related, criticism of QALYs is, as John Broome claims, that 'they do not properly take account of *justice or fairness in the distribution of good*.'³⁴³ One view of utilitarianism is that it attaches no value to fairness, while another is that it is itself an account of fairness, indicating that to maximise good is itself what is fair.³⁴⁴ Broome adopts the former view and claims that justice is not the proper domain of

³³⁹ Harry Moody, *Ethics in an Ageing Society* (London: The Johns Hopkins University Press, 1992): p25.

³⁴⁰ I. R Jones & P.F.D. Higgs, 'Health economists and health care provision for the elderly: implicit assumptions and unstated conclusions,' in K. Morgan (ed.), *Gerontology: Responding to an Ageing Society* (London: Jessica Kingsley, 1992), p120.

³⁴¹ Jerry Avorn, 'Benefit and Cost Analysis in Geriatric Care: Turning Age Discrimination in to Health Policy,' *New England Journal of Medicine* 310 (1984): 1294-1301.

³⁴² John A. Vincent, *Politics, Power and Old Age* (Buckingham: Oxford University Press), p61.

³⁴³ John Broome, 'Good, Fairness and QALYs,' in Bell & Mendus (eds.) *Philosophy and Medical Welfare*, p57.

³⁴⁴ See James Griffin, 'Some Problems of Fairness,' *Ethics* 96 (1985): 100-118.

QALYs but rather that they are merely aimed at assessing the total or the aggregate of good to be produced by different policies, in rather the same way as utilitarian calculations do. We might therefore believe the QALY approach to be intuitively unjust because its guiding principle that we should distribute in such a way that will generate most QALYs conflicts with the principle of need. I have argued throughout the thesis that there are certain synchronic needs that each person has, and which have equal urgency irrespective of the age of that person. However, the QALY approach attaches as much value to the QALYs generated by treating those in a state of lesser need as it does to those generated by treating those in a state of greater need. But, as Lockwood notes, even if a healthcare economist could show that facelifts generated more QALYs than kidney dialysis it may be that justice should prevent the shift of resources from one to the other.³⁴⁵

Another way in which the QALY might be seen to violate justice is that it does not give credit to those individuals who have been responsible. By themselves QALYs do not differentiate between those who have brought about their need by their own actions, perhaps through pursuing an unhealthy lifestyle, and those who have looked after themselves. Thus, as far as the QALY method is concerned the responsible old might find themselves being passed over in favour of the irresponsible young in just the same way as with the FIA.

Therefore, to conclude this section, the QALY method, as with the FIA and CLV, is not intrinsically ageist because it does not necessarily involve negative cultural judgements about the old. Unlike the FIA, QALYs are not inherently ageist because

³⁴⁵ Lockwood, 'Quality of Life and Resource Allocation.'

they do not *necessarily* discriminate against the old, though, like the CLV, they will often nonetheless tend to do so in a way that may be wrong for extrinsic reasons: either because they reinforce moral bias or because the social and economic consequences for older people are morally wrong. Like the FIA, the QALY method is unconcerned with the principle of personal responsibility, while that principle is integral to the CLV. Finally, the QALY is different from both the CLV and the FIA because it is not concerned with equalising shares of some good (either life, resources or welfare) between persons, rather it is the good itself (quality life years) that is the focus of the concept.

5.4 Synchronic alternatives to the CLV: the SSV and CSV

As we have noted in the previous chapter, there are different possible views about synchronic patterns of distributions which have been developed by Dennis Mckerlie and Larry Temkin.³⁴⁶ These are important because if they are at all plausible then we are able to challenge any exclusive concern for the CLV (perhaps on the basis that it neglects synchronic needs), and we will also be able to deny that the justification of egalitarian ageism is not contentious. To this end Mckerlie suggests that distributive equality should not be conceived simply as a relation that exists between the complete lives of different people, but may alternatively exist between either the corresponding segments, or between the simultaneous segments of different people's lives. Thus, we can distinguish at least three possible views about where the relation of equality

³⁴⁶ See Dennis Mckerlie, 'Equality and Time,' *Ethics* 99 (1989): 475-491; Mckerlie, 'Equality Between Age-Groups,' *Philosophy and Public Affairs* 21 (1992): 275-295; Larry Temkin, *Inequality* (Oxford: Oxford University Press, 1993), chapter 8.

should lie: the CLV, the simultaneous segments view (SSV), and, thirdly, the corresponding segments view (CSV). Note that for the purposes of simplicity the examples used in this section will refer only to strict equality rather than prioritarianism. The prioritarian principle will be the focus of attention in the following section where I examine Mckerlie's more complex recent analysis on the subject of synchronic distribution.

An integral part of the CLV is a belief that the way that people's lives have fared in the past is important, and it assumes that one period of faring badly can be compensated at a later temporal segment with another period of faring well. For this reason Mckerlie refers to any theory that adopts the CLV as *taking places* egalitarianism. It assumes that there is nothing wrong with taking turns to experience misfortune provided that everyone has equal amounts of good fortune over their complete lives.

In contrast to the CLV, both the SSV and the CSV do not view the way people have fared in the past as important. The CSV merely requires that everyone's childhood, youth, middle-age and old age correspond and are roughly equal. That would still mean that inequality could legitimately exist between the young and old, though, just as it may for the CLV. The CSV, like the CLV, also implicitly accepts that taking turns to experience plenty and destitution is not wrong. The SSV, however, denies this assumption. The SSV requires that all inequality should cease between everyone living through different time segments of their lives at the same time. This means that those that are now in their youth should have shares of benefits equal to those who are now old or middle aged. It might be said that this latter view is the most authentically

egalitarian because it aims purely at equality and does not justify inequality between time segments as the other two views do. In support of the synchronic view, and in opposition to ‘taking turns egalitarianism’, Temkin asks; ‘if an egalitarian system is truly objectionable, shouldn’t an egalitarian clearly and unequivocally oppose and seek to dismantle it, rather than favour its perpetuation with different victims?’³⁴⁷

Each of these views make different claims about the justice or injustice of egalitarian ageism, and the tables below can be used to illustrate this. We should imagine that A and B are either two separate individuals or age groups, and that the numbers indicate different levels of benefits at different temporal periods. In Case I, A and B live through four temporal periods of equal length, but B is significantly worse off than A over her complete life. In Case II, both A and B have equal amounts of benefits over their complete lives, but they take turns in being wealthy and poor. In Case III the two groups or individuals are of different birth cohorts, B not being born until the third temporal segment of A, but both live equally long lives and both enjoy equal benefits over the course of their complete lives. Case IV is similar to Case III except that where A and B are both alive their shares of benefits are equal.

		T1	T2	T3	T4	T5	T6
Case I	A	8	8	8	8	-	-
	B	2	2	2	2	-	-
Case II	A	8	8	2	2	-	-
	B	2	2	8	8	-	-

³⁴⁷ Temkin, *Inequality*, p240.

Case III	A	2	2	8	8	-	-
	B	-	-	2	2	8	8
Case IV	A	8	8	2	2	-	-
	B	-	-	2	2	8	8

The CLV finds nothing bad about Cases II, III and IV because both A and B end up with the same benefits over their complete lives. The CLV finds Case I morally wrong, though, because B ends up with significantly less than A over her complete life. The CSV can only find Case III acceptable, and it views Cases I, II, and IV as being as bad as each other because in all three cases the corresponding segmental inequality is the same. The SSV agrees with the CSV that both Cases I and II are equally bad but for a very different reason. In both I and II each of the simultaneous segments of A and B are equally unequal. However, while CSV favours Case III, SSV would claim that the inequality existing between A and B in the years that their lives overlap is also morally bad. The SSV could only find Case IV acceptable, and on first glance this may seem the most plausible from a common sense view.

However, the fact that SSV is exclusively concerned with synchronic equality means there is a reason for thinking that this view is also implausible. If we imagine two further cases, Case V in which although both A and B fare quite well over the course of their entire lives, there nevertheless exists some inequality between them and A is always slightly better off. In Case VI both A and B have equal shares of benefits at each stage of their lives, but neither are as well off as their counterparts in Case V.

		T1	T2	T3	T4
Case V	A	15	15	15	15
	B	10	10	10	10
Case VI	A	8	8	8	8
	B	8	8	8	8

The implausible implication of a concern for strict synchronic equality is that the SSV would always favour Case VI to Case V, and indeed, would favour a move from Case V to Case VI if it were possible. But the same is also true for the strict egalitarian CLV inasmuch as it gives exclusive concern for diachronic equality, because the share of complete life benefits of A in Case V far exceeds that of B, and the view would therefore deem it unjust. The example is thus as much a criticism of the plausibility of strict diachronic equality as it is strict synchronic equality.³⁴⁸

Nevertheless, one important implication which Temkin highlights with regard to the practical significance of these different views is that while the SSV would always advocate transfers from one age group to another if any inequality existed between them at any particular temporal moment, the CSV and the CLV would not. The fact that these latter views accept the idea of taking turns means that they would not think it necessary to make such transfers even if, for example, today's old were significantly worse off than today's young. If the old have fared well in the past then there is nothing necessarily wrong with their being destitute in their old age. In fact,

³⁴⁸ Note that this implication only challenges the plausibility of the CLV of strict equality and does not affect the CLV of priority.

those views may actually *require* the destitute elderly to transfer some of their few remaining resources to the younger age group if we could calculate that over a complete life they otherwise would have been better off than the young. So both views would countenance significant inequality between young and old, and so justify egalitarian ageism.³⁴⁹

The main purpose of this section has been to show that the CLV sometimes has implications that are not morally intuitive, that the CLV is not the only possible view of distributive equality, and that there are alternative views which would seem more plausible in some circumstances. For that reason it is not obvious that we should always give the CLV exclusive concern. However, for any of these alternative views to have any plausibility most people would argue that we need to move from strict egalitarianism to a less demanding priority view.

5.5 The synchronic priority view (SPV)

Let us return, therefore, to the distinction that Parfit made between priority and equality, outlined in section 4.2 (iii), and the three possible answers to the question of to whom we should give priority:

- (1) those who are worse off in their lives as a whole,
- (2) those who are worse off at a time,

³⁴⁹ Mckerlie rejects the CSV because he thinks his examples show that we are primarily troubled by inequalities between synchronic segments. Norman Daniels, however, disagrees and, assuming that there is equality over complete lives Daniels is troubled less by inequality between corresponding segments than by SSV. The reason for this is that inequalities in salaries and prestige seem less wrong when attached to stages of a career that each person goes through, because these inequalities provide incentives for productivity.

(3) those who have needs that are morally more urgent.³⁵⁰

To recapitulate, Parfit notes that there is often a divergence between (1) and (2), but a convergence between (2) and (3). Thus, someone who is now among the worst off may have been quite well off in the past, but if a person's needs are morally more urgent then she is likely to be someone who is worse off at a time than others in society. Parfit chooses to 'ignore' this problem, but he notes that other prioritarians have tended to conflate the distinction between (1) and (3). Thomas Nagel, for example, seems initially to favour the idea that urgency of needs takes priority over complete lives, but he then conflates the distinction by claiming that 'Priority is given to individuals who, *taking their lives as a whole, have more urgent needs*'.³⁵¹ Such conflation, however, is a mistake. If complete lives are the relevant unit of egalitarian concern then the divergence between the worse off over a complete life and those whose needs are morally more urgent at a temporal moment are increased. Again, imagine two persons A and B living through four temporal periods, and for the moment let us put the independent moral principle of personal responsibility for one's predicament to one side.

		T1	T2	T3	T4
Case VII	A	9	9	2	2
	B	5	5	5	5

If we were concerned to promote priority at a time, i.e. to take a synchronic priority view, we would give assistance to A at T3 and T4, even though over a complete life

³⁵⁰ Derek Parfit, 'Equality or Priority?', delivered as the Lindley Lecture at the University of Kansas, 21 November 1991, reproduced in Clayton & Andrews (eds.) *The Ideal of Equality*, pp81-125.

³⁵¹ Ibid, p121

she will do better than B, and even though she has been significantly better off than B in the previous two temporal periods. We might take this further and suggest that if we are referring to different though overlapping generations, it might be thought morally right to assist the members of an older generation that has been better off during their youth than the current young are today. Such a view would thus conflict with the views of those who advocate ‘generational equity’. Nevertheless, if we imagine the digit 2 in the example below to signify significant destitution, then it is not absurd to argue that at T3 society should recognise that A has a stronger claim to assistance than B, despite the fact that B will be worse off over a complete life than A.

Case VIII	T1	T2	T3	T4	T5	T6
A	8	8	2	2	-	-
B	-	-	6	6	3	3

Thus, in the context of this thesis, an older person’s needs may be currently more urgent than a younger person’s, even though over a complete life the older person has been much better off than the younger person has a hope of being.³⁵² If we give priority to the more urgent needs at a time we would help the older person in this example, if we give priority to the fair shares of benefits over complete lives we would give priority to the younger person. We can define the former of these views as the synchronic priority view (SPV), and the latter the diachronic priority view (DPV). In his most recent article Mckerlie defends an SPV that would *sometimes* outweigh

³⁵² For the purposes of this argument I am discounting the practical difficulties of ever ascertaining the exact quality and quantity of benefits the younger person will know that she has a chance of receiving.

diachronic priority.³⁵³ Mckerlie argues that if we accept that there are distinctive principles of justice between age groups, principles that are distinctive from principles of justice solely concerned with complete lives, then the former are best understood as priority for the temporally worst off in society.

However, the SPV faces the same problems as the strictly egalitarian SSV: it does not give any importance to how well off people have been in the past. For example, imagine the two people in Case IX, A who has been well off throughout his life until old age when he falls to a level of near destitution, and B who has been worse off than A throughout his life but in old age is marginally better off than A.

		T1	T2	T3	T4
Case IX	A	9	9	9	5
	B	6	6	6	6

At T4 the SPV would give priority to A, which may not seem fair to B who has been significantly worse off diachronically. But Mckerlie does not suggest that we should abandon concern for diachronic distributions altogether. Rather, what Mckerlie is saying is that if we apply the priority principle to both complete lives and to temporal periods of people's lives we might sometimes think that the special value of helping someone who is badly off now is more important than the special value of helping the person with the worst complete life. Thus, SPV is not the only consideration that

³⁵³ Dennis Mckerlie, 'Justice Between the Young and the Old,' *Philosophy and Public Affairs* 30 (2002): 152-177.

matters for the distribution between young and old, and it will not always be the strongest.

To adopt the SPV exclusively would not be a plausible approach for at least two reasons. Firstly, it would imply that there was something objectionable about the idea of 'taking turns'. And, as Geoffrey Cupit has pointed out, most people who think that age discrimination is unjust do so without holding that 'taking turns' is by its nature unjust.³⁵⁴ Secondly, an exclusive concern for synchronic distribution would not recognise the importance of the independent moral principle of personal responsibility. As I noted in chapter 4, the main reason thinkers like Dworkin are committed to the CLV is because it ensures that people must be responsible with the fair share of benefits they receive, and this is thought to justify the luck egalitarian claim that individuals should shoulder the cost of their free choices (or option luck). If society ensured that people always had sufficient benefits within each temporal period then people would not need to be responsible for their choices. They could squander their equal share of initial resources within each temporal period with impunity, and this would have detrimental effects for wider issues such as a society's productivity.

We could thus formulate a dilemma for society with regard to the issues of the CLV, egalitarian ageism, and personal responsibility. Either we accept the CLV which condones ageist policies, or else we could challenge the CLV in which case we risk violating the principle of personal responsibility. What we need is a medium between diachronic and synchronic distributive principles.

³⁵⁴ Geoffrey Cupit, 'Justice, Age, and Veneration,' *Ethics* 108 (1998): 702-718, p707.

5.6 The hybrid model of distributive justice

Mckerlie therefore favours what we might call a hybrid notion of the unit of egalitarian concern that seeks to balance synchronic needs with diachronic fairness.

He outlines his view thus:

One possibility is that we care about equality [or priority] between complete lives, but we also accept some principle that gives weight to inequalities between parts of lives. Faced with a choice about whether to compensate for past inequality, we would have to balance the gain in equality between complete lives against the loss in terms of equality between parts of lives. In some examples we might think that one consideration was stronger, in different examples the other consideration.³⁵⁵

A distribution should not be confined to the CLV because many egalitarians would find synchronic inequality morally wrong in some circumstances when the fundamental needs of persons are ignored. Nevertheless, we should not rule out considerations of the fairness of complete life distributions both because people have diachronic interests and because we must give expression to the moral principles of the ‘separateness of persons’, and of individual responsibility.

However, the hybrid model has obvious flaws. Firstly, although the hybrid model of strict egalitarianism would be fairly easy to construct it would be morally implausible because it would require that people enjoyed equality both over their complete lives as well as at synchronic periods. The ideal distribution would therefore look like Case X, and not only would it be subject to the levelling down objection, but it would also leave little room for personal responsibility.

³⁵⁵ Mckerlie, ‘Equality and Time’, p484.

Case X		T1	T2	T3	T4	T5	T6
	A	8	8	8	8	-	-
	B	-	-	8	8	8	8

The hybrid model of prioritarianism, on the other hand, would incorporate a concern for both synchronic and diachronic distributions and would compensate individuals on the basis of the urgency at each point. However, prioritarianism measures the goodness of well-being independently of any particular distributions of people's well-being. Therefore, a hybrid prioritarian principle is complicated by the fact that there are three types of measure to be calculated: firstly, the measure of well-being at a period; secondly, the measure of complete lifetime well-being; and thirdly, a measure that balances the two. The problem is that if there is no prior distributive principle to determine the third measure, then the balance between synchronic and diachronic priority will be a matter of mere intuition. Therefore, in complicated situations such as Case XI below, it may be difficult to decide upon which of two people we should assist, and while some people would give assistance to A over B on the grounds that her synchronic position was morally more urgent, others would give assistance to B on the grounds that she would otherwise have a significantly less complete life share.

		T1	T2	T3	T4
Case XI	A	9	9	8	3
	B	6	6	6	6

5.7 Synchronic distribution and (dis)continuous personal identity

Despite the intuitive and practical difficulties that the purely synchronic and hybrid models of distribution face, one further criticism that we can refute is that they rely upon a metaphysical theory of discontinuous personal identity. Being concerned with the temporal well-being of persons does not imply that we accept that people have different identities at different stages of their lives. This is despite the fact that the idea of a discontinuous personal identity has been used as a defence against ageism.

Derek Parfit has provided the classic contemporary account of a discontinuous personal identity, which he supports with descriptions of experiments involving brain bisection.³⁵⁶ Briefly, Parfit argues that we only think that rationality implies that we should give equal concern to each temporal period of our lives (described as the Requirement of Equal Concern) because we uncritically assume what he calls the Non-Reductionist view. That is we accept the metaphysical idea of the Cartesian ego which involves the existence of a mental substance that makes an individual the same person over time. This means that we assume that ‘personal identity over time does not just consist in physical and/or psychological continuity but a ‘further fact’.³⁵⁷

Parfit’s own view is that of the Reductionist. That is, every person’s existence consists only of a brain and body, and that continued physical existence and psychological connectedness are the only features that constitute a person’s identity. The logic of his view is that, because psychological connectedness and continuity can

³⁵⁶ Parfit, *Reasons and Persons*, pt 3. See also Thomas Nagel, ‘Brain Bisection and the Unity of Consciousness,’ in *Mortal Questions* (Cambridge: Cambridge University Press, 1979), 147-164.

³⁵⁷ Parfit, *Reasons and Persons*, p210.

vary greatly in degree, it is quite plausible to suggest that in an important way we are not the same person at one temporal point as we were at an earlier temporal point. If we accept this view about our personal identity, then it would not be irrational for us to accept what he calls the Extreme view, that we have no more reason to care about the later stages of ourselves as we do to care about the lives of other people. And that means we can quite rationally 'discount', or care less about, the well-being of a future self.³⁵⁸

If our older selves are no more connected to us than other people it would significantly undermine the idea that good and bad periods of life can be compensated for over a complete life, and we would therefore have to reject the CLV. If so, then we would have to consider the claims of different people of different ages at any synchronic moment to be no different from the justice between separate persons over their complete lives. This Reductionist view about personal identity might therefore be used as a defence of anti-ageism rather than ageism, and something like this defence has been used by Age Concern itself. One reason that Age Concern gives for rejecting the idea that an individual's lifestyle choices should affect her moral claims and entitlements in later life is that,

[M]any of us, as we age, find it difficult to identify with the thoughts we had and the actions we performed when young. In other words, in some important sense we are no longer the 'same people' in old age that we were at the time we engaged in so-called imprudent behaviours.³⁵⁹

³⁵⁸ The discount rate is based upon the level of psychological connectedness that exists between the earlier and later selves.

³⁵⁹ Age Concern England, *The Millenium Papers: Values and Attitudes in an Ageing Society* (Age Concern England, 1999), p27.

If individuals are no longer the same people as they age then we have every reason to treat elders no differently from younger people. It provides a reason to ensure older people have as much in the way of society's benefits as anyone else irrespective of the size of their previous claims on society, and this would make an exclusive concern for the synchronic principle of distribution the most plausible.³⁶⁰

Thus, if the reductionist view were linked to a synchronic distributive view of equality or priority, then it would challenge the justification of egalitarian ageism. Nevertheless, it might at the same time do nothing to discourage cultural ageism. It might be suggested that a discontinuous identity is precisely what the culturally oppressive model of ageism posits and might therefore be used as a justification of ageism. Cultural ageism justifies treating people differently because they are seen to be intrinsically inferior to younger people in the same way that racists perceive members of different ethnic groups and as many sexists view women. As we saw in chapter 3, Iris Young argues that older bodies are objectified as different, ugly and loathsome because they are associated with decline and decay, and Julia Kristeva's conception of abjection claims younger people develop 'border anxiety' about their own identities which cause them to act discriminatively against what they perceive as a threat. The old are seen as a threat because their objectified bodies represent the decay that all of us will one day become. Philosophical ideas about discontinuous identity and cultural ageism both propose that older selves are not the same as the younger selves they once were, and this posits a 'them' and 'us' relationship between the two. Thus, the argument that Age Concern puts forward to challenge egalitarian

³⁶⁰ However, the view is of course subject to practical difficulties such as determining exactly when a person had indeed become a different person, and on a societal scale this problem might be insurmountable.

ageism might inadvertently reinforce ageist stereotypes about the old being somehow different.

The effects of this might be illustrated by the work of Richard Posner who has explicitly embraced the idea of a discontinuous personal identity in order to explain the behaviour of the elderly.³⁶¹ Posner claims that we can think of the life of any one person as a series of 'multiple selves' time-sharing the same body, and he justifies this claim by identifying the cognitive shift between what he calls the 'fluid' intelligence of the young to the 'crystallised' intelligence of the old. The fluidity of the young represents the imagination they bring to problem solving and their hope and optimism about what might be achieved, while the crystallised intelligence of the old represents the reliance on experience-based skills and knowledge that become increasingly redundant. Because of this Posner suggests that 'the costs of learning new things are lower to young than old people'.³⁶² Indeed, if such is the case then employers would be justified in discriminating against older candidates for jobs that required the development of new skills.

However, unlike Parfit, Posner has no theory of the kinds of connectedness that might underlie claims about identity. Moreover, as Daniels argues, Posner in fact merely 'reinforces ageist stereotypes' by connecting stereotypical views about the old and young with this supposed shift in cognitive style.³⁶³ Because the old have a crystallised intelligence, it seems, they also have the psychological traits of

³⁶¹ Richard Posner, *Ageing and Old Age*, (Chicago: University of Chicago Press, 1995).

³⁶² *Ibid*, p70.

³⁶³ Norman Daniels, 'Does Economics Provide a Unified Account of Ageing Behaviour and Ageing Policy?' *Ethics* 108 (1998): 569-585.

‘loquacity’ and ‘penny-pinching’, and Posner links it to a number of common stereotypes about the old being ‘sure about nothing’, ‘cynical’, ‘small-minded’, ‘pessimistic’, ‘cowardly’, and concerned only with ‘keeping alive’.³⁶⁴ None of this supports the anti-ageist position. Nevertheless, despite this debate over the implications of a discontinuous personal identity there are good reasons for either rejecting it or ignoring it in matters of social justice.

Firstly, the Reductionist view is simply deeply implausible. As Christine Korsgaard points out, there are practical reasons for regarding ourselves as the same rational person existing over time, and that the conception of a person as a unified agent is not therefore based upon a metaphysical assumption, but practical reason.³⁶⁵ If we think of what is important in life we find that it involves relationships with others, interests, ambitions and life-plans, all of which exist and develop over time. And in order for us to take part in these activities we are logically required to think of ourselves as a unitary agent, which means that ‘[w]hen the person is viewed as an agent, no clear content can be given to the idea of a merely present self’.³⁶⁶ That is not to say, however, that we do not take ourselves to have synchronic interests, because the existence of synchronic interests does not challenge either a continuous personal identity or the idea that at any moment our agency involves long-term goals as well. Moreover, as Geoffrey Cupit points out, ‘[m]ost people who think age discrimination

³⁶⁴ Posner, *Ageing and Old Age*, pp102-108.

³⁶⁵ Christine M. Korsgaard, ‘Personal Identity and the Unit of Agency: A Kantian Response to Parfit,’ *Philosophy and Public Affairs* 18 (1989): 101-132.

³⁶⁶ *Ibid*, p114.

unjust do so, I suggest, without entertaining any doubts about the identity of people over time'.³⁶⁷

A second reason to reject Reductionism, at least as far as social justice is concerned, is that a political or moral theory is conceptually independent of the metaphysical theory of personal identity. According to Rawls, moral theory 'is the study of how the basic notions of right, the good, and moral worth may be arranged to form different moral structures'. Its project is 'to identify the chief similarities and differences between these structures and to characterize the way in which they are related to our moral sensibilities and natural attitudes, and to determine the conditions they must satisfy if they are to play their expected role in human life.'³⁶⁸ As Rawls explains, though, this moral project is logically separate from metaphysical questions.

The study of substantive moral conceptions and their relation to our moral sensibility has its own distinctive problems and subject matter that requires to be investigated for its own sake. At the same time, answers to such questions as the analysis of moral concepts, the existence of objective moral truth, and the nature of persons and personal identity, depend upon an [moral] understanding of these structures. Thus the problems of moral philosophy that tie in with the theory of meaning and epistemology, metaphysics and the philosophy of mind, must call upon moral theory.³⁶⁹

Therefore, whether or not the Reductionist view is correct is irrelevant from the perspective of moral theory unless there is a further *moral* theory that shows that this view about personal identity is morally relevant.³⁷⁰ Rawls recognises that '[o]ur conceptions of the good can and often do change over time, usually slowly but

³⁶⁷ Geoffrey Cupit, 'Justice, Age, and Veneration,' p705.

³⁶⁸ Rawls, 'The Independence of Moral Theory,' (1975) in *Collected Papers*, p286.

³⁶⁹ *Ibid*, p287.

³⁷⁰ Such an argument may be possible if the moral notion of well-being we adopt is the experienced psychological state of welfare. However, I largely dismissed the welfare metric in section 4.4.

sometimes rather suddenly’, and that ‘[w]hen these changes are sudden, we are likely to say that we are no longer the same person’, yet such a conversion implies no change in our public or legal identity.³⁷¹

5.8 Concluding remarks

This chapter has examined a number of varying units of egalitarian concern and found that by themselves they all have implausible implications, both from strict egalitarian and prioritarian perspectives. We have said that individuals have irreducible synchronic and diachronic interests and that there is no principle to determine that one is more fundamental than the other. From a distributive egalitarian perspective, therefore, we are faced with a dilemma: should we fulfil the diachronic interests and allow ageist policies, or should we promote synchronic interests and sacrifice a degree of concern for personal responsibility? While the CLV, the FIA and the QALY will each justify ageist public policies, the synchronic alternatives do not sufficiently respect the principle that each of us should take personal responsibility for our lives. The most intuitively compelling view of egalitarian distribution, therefore, is a hybrid model, which, rather than giving exclusive concern to either diachronic or synchronic interests, recognises the importance of both. The problem for this hybrid view of distribution, however, is that it is difficult to formulate and operationalise as a workable principle of economic justice.

³⁷¹ Rawls, *Political Liberalism*, p22. Note that Rawls uses a political conception of the person rather than a moral conception.

However, if we accept the proposition in chapter 4 that social equality is morally prior to distributive equality, then by establishing a distributive system that encourages and maintains that social equality we fulfil what justice requires. But we do not need to ensure diachronic distributional equality in order for there to be social equality. What is needed for social equality is a distributive system that protects the synchronic interests that persons have in enjoying a minimally decent existence, but which at the same time respects the principle that individuals are personally responsible for the success of their own lives. In chapter 7 I argue, in line with Elizabeth Anderson's account of DE, that both of these goals might be achieved by using a version of the capabilities metric. Before examining this distributive system, however, we should further critique the CLV in the next chapter by developing the concept of the prudential analogy (PA). The PA, which is a logical extension of the CLV, involves an analogy of how one rational individual would intra-personally distribute their finite complete life share of benefits and then recreates it on a societal scale. In this way individual prudence is thought to guide principles of social justice. Nevertheless, while the CLV examined in this chapter merely condones ageism as an unfortunate consequence of pursuing diachronic equality, the PA will actually prescribe it.

Chapter Six: Egalitarian ageism and the prudential analogy

My argument in this chapter will be that a prudential analogy is a logical adjunct to the premise of the CLV, and that while the latter only justifies ageist policies, the two principles combined will actually prescribe them. The chapter examines two versions of the prudential analogy, used by Ronald Dworkin and Norman Daniels respectively, in order to illustrate their discriminatory implications.

6.1 The prudential analogy as an adjunct to the CLV

The CLV deals with the share of publicly provided benefits to which people are entitled over the course of their entire lives. These benefits are limited because we exist within conditions of relative scarcity, and publicly provided benefits must consequently be rationed between citizens in a way that is fair. The fact that they are limited means that we must find a way of distributing those finite shares of benefits over the different stages of a person's life in such a way that will ensure he or she will enjoy as good a life as possible. This, then, is the purpose of the prudential analogy (PA), and it is a logical adjunct to the CLV.³⁷²

The PA involves a fundamental shift in perspective, and rather than viewing the problem of intergenerational justice as one between competing groups of young and old, it views each age group as representing a different stage in one life. A PA is an analogy between; on the one hand, how one rational individual would invest her equal diachronic share of benefits in such a way as to insure herself against disease,

³⁷² The PA would of course be irrelevant in conditions of abundance rather than scarcity because there would then be no finite share to distribute intra-personally.

accidents, or poverty in old age, and, on the other hand, how society should provide the means to meet these needs to all citizens. To ensure the analogy is fair the prudential agents would be in possession of the general facts of her society's level of wealth, cost of living, the average life expectancy, and the relevant facts of tendency to disease and accidents. The PA is thus an ideal thought experiment, and the insurance the rational agent would choose to pay, and the benefits she would accrue, could then be replicated on a societal scale in the form of tax and welfare benefits.

The PA is based on two premises. Firstly, there is an understanding that justice is concerned only with the complete lives of separate persons, and this means that a distribution across the temporal parts of different lives is only objectionable if it produces an unfair distribution in terms of complete lives. Secondly, the issue of fairness between age groups can be reduced to a question of prudential thinking about complete lives. That is to say if we understand social justice as the 'fair' distribution of benefits between separate lives then we can think of justice between age groups as the 'fair' distribution of those equal benefits over the course of those separate lives. These two premises suggest that there is no real conflict between the claims of the young and old and that prudential thinking will find a solution that benefits everyone, or, as Daniels claims, 'prudence guides justice'.³⁷³

The combination of the CLV and PA addresses one of the criticisms of the FIA outlined in the last chapter. The FIA claims that once people have had a 'good innings' of life that they should be discriminated against within health care in favour

³⁷³ Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996), p 281.

of younger people who have not yet had their fair innings. The criticism of that ageist justification is that the old will have paid more in national insurance contributions over their longer lives, and so have contributed more to the welfare system than the young, that consequently they *deserve* to be treated before the young. The FIA is unconcerned with previous contributions and so cannot address the criticism. However, unlike the FIA, a combination of the CLV and a PA do not focus exclusively on chronological age but are rather directly concerned with how people have or would have contributed to a welfare system in the past. This method would determine how those individuals would have invested their income in a way that would take into consideration what people should be entitled to in old age. That means, if a welfare system discriminated against the old and either restricted their access to certain medical treatments, or only provided them with an inadequate pension, then that would be because rational individuals would have chosen those policies from within an ideal decision process.

One final issue for this section is the effect the adoption of a PA would have on the influence of the independent moral principle that individuals should be personally responsible for the success of their lives. As we have seen, personal responsibility is an integral part of the reason that many thinkers adopt the CLV. Nevertheless, implementing the PA in practice has the effect of diminishing the influence of this principle. The reason for this is that by replicating the analogy on a societal scale means providing welfare benefits to those individuals who would not have been sufficiently rational to invest any of their diachronic share of benefits as contributions to that system. Thus, because the PA must work on an averaging principle, both the rational and the irrational would be insured to the same degree in the real world. This

is not to say, however, that certain ways of encouraging responsibility could not also be introduced, i.e. by imposing penalties on smokers for the costs they create for health care.

The rest of the chapter examines the different prudential analogies within the work of Daniels and Dworkin. It is widely accepted that the work of Daniels has set the agenda for political philosophy as far as the problem of intergenerational justice is concerned, just as the work of John Rawls has set the agenda for the broader concept of social justice. Indeed, as Clark Wolf has noted, ‘whether one agrees with Daniels or not, his work is the place to start.’³⁷⁴ Nevertheless, before examining Daniels’ conception of the prudential analogy I wish first to look at Dworkin’s theory, both because it is the more flawed, and because to correct that flaw Dworkin would be unable to move to Daniels’ conception without conflicting with his wider theory of justice.

6.2 Ronald Dworkin and a ‘just’ diachronic distribution of healthcare

Dworkin’s conception of social justice has already been outlined in chapter 4, and in this section we examine the practical implementation of his hypothetical insurance model for the issue of justice in the distribution of healthcare.³⁷⁵ Dworkin seeks a just distribution of society’s goods to the temporal stages of individual lives, and his theory explicitly insists that prudence and prudent saving are the key to social justice. After equalising resources prudent agents are asked whether they would buy in to an

³⁷⁴ Clark Wolf, ‘Healthcare Access, population ageing, and intergenerational justice,’ in A. Harry Lesser (ed.), *Ageing, Autonomy and Resources* (Aldershot: Ashgate, 1999), p215.

³⁷⁵ Dworkin, ‘Justice in the Distribution of Health Care,’ in *McGill Law Journal* 38 (1993): 883-899.

insurance plan that would guarantee certain medical treatments and diagnostic procedures but would deny others. Dworkin tries to determine what we would rationally spend on healthcare in competition with the other goods we may wish to purchase, assuming that each person's purchasing power is equal and finite. The idea that shares should be equal and finite means we can measure the cost of any preference we have for one good in terms of the absence of another good of similar value. If individuals would purchase certain healthcare goods (i.e. emergency medical treatment) and not others (i.e. life-extending treatment when very old or senile), then society should emulate those hypothetical decisions in order to provide a just distribution of healthcare resources. Thus, the central idea of Dworkin's PA is that we should aim in practice to make collective, social decisions about the quantity and distribution of healthcare so as to match, as closely as possible, the decisions that people in the community would make for themselves in what he calls 'the appropriate circumstances'.³⁷⁶

The first condition of these appropriate circumstances is, as already outlined above, that the economic system of society should provide a 'fair equality' in the distribution of resources, and only by doing this can we treat all citizens with equal concern and respect. The second of the appropriate conditions involves individuals having full awareness of the value, cost and side effects of all medical procedures, and the third condition is a type of Rawlsian veil of ignorance hiding individuals from knowledge of their own probability of contracting any disease or becoming victim to any kind of accident or violent incident. If we could keep as close to these conditions as is practically possible, then the decisions that people in the community would have

³⁷⁶ Dworkin, 'Justice in the Distribution of Health Care,' p888.

made for themselves are the ones that the state should emulate on a societal basis. This then is the application of the insurance analogy to the problem of justice of healthcare distribution. Note, however, that what Dworkin deems to be just are the decisions that people would make for themselves 'if they were looking *from youth down the course of their lives* and trying to decide what risks were worth running in return for not running other kinds of risk.'³⁷⁷ This phrase 'looking from youth down the course of their lives' leaves Dworkin's use of prudence open to the criticism that it is ageist. This is because it is based upon the choices that a young person would make, whilst aware of her current age and goals, and the result of that choice will consequently be biased in favour of the young and against the old.³⁷⁸ We might argue that this represents a 'tyranny of youth', because the decisions that the younger person makes will limit the opportunities of the same person when they become older.

What, then, does Dworkin believe would be the result of this insurance analogy? He believes that almost no-one would purchase insurance that would provide life-saving treatment once they had fallen into a permanent vegetative state (PVS), and no-one would purchase insurance for expensive medical treatment after they had entered the later stages of Alzheimer's disease. Most contentious of all, though, few would insure for the provision of 'heroic medical intervention' that would keep them alive four or five more months or 'technology whose main results benefit people in relatively old age'.³⁷⁹ The reason that people would not so invest is that they could better spend

³⁷⁷ Ibid (Italics added).

³⁷⁸ On this point see Richard Posner, *Ageing and Old Age*, pp266-7; Tyler Cowan, 'Comment on Daniels and Mckerlie,' in Lee M. Cohen (ed.) *Justice Across Generations* (Public Policy Institute of the AARP, 1993): 227-35.

³⁷⁹ Dworkin, 'Justice in the Distribution of Health Care,' p890.

those premiums on training, experience, culture or investment. Although Dworkin acknowledges that many people want to remain alive as long as possible, provided they remain conscious, alert and relatively pain free, he nevertheless makes the following claim:

My point is rather that they would not want those additional months at the cost of the sacrifices in their earlier, vigorous life that would be necessary if they had to make that choice. They would think the money better spent, earlier, on job-training or education or investment or on something else that would *benefit their lives as a whole* more than just taking on a few months of very limited life at the end.³⁸⁰

What this represents, in addition to a tyranny of the youth, is a conflict between the synchronic and diachronic interests of a person. The synchronic interests of the older person is to live a few more months, or undergo certain beneficial treatments, while the diachronic interests of the person is perhaps that the resources be diverted from financing these later benefits and use them to provide benefits for the younger self. If we followed Dworkin's reasoning it would mean harming the synchronic interests of our own later selves by allowing the synchronic interests of younger selves, or what we at any time perceive as our diachronic interests, to dictate the distribution of a finite share of resources over a complete life. But one might object that there is surely more to what justice requires than the way that prudent people in their youth would determine to allocate a finite set of resources 'down the course of their lives'. Is it plausible to imagine a doctor at a patient's bedside giving the following homily:

I'm sorry Mrs Smith, but I'm afraid we are going to deny you the medical treatment that would give you five more months of life. The reason we deny you this is because, although you think you want those months now, if you were a rational 20 year old deciding how to spend your finite share of goods down the course of your life, you would elect to spend the money that would have paid for this treatment on a youthful culture trip to Italy instead.

³⁸⁰ Ibid, p891 (italics added).

We might ask whether there are ways of amending Dworkin's scheme to avoid the 'tyranny of youth' criticism. While there is not room here to examine this question in depth it would seem that the best way to avoid the tyranny of youth is by adopting a more extensive veil of ignorance in the way that we will see Daniels does. However, as we shall also see in the next section, such a veil of ignorance does not make the prudential analogy immune to criticism. Moreover, it is arguable that a broader veil would not be compatible with Dworkin's wider theory as briefly outlined above. Dworkin's theory differs from that of Rawls precisely because Dworkin wants to make individuals aware of their conceptions of the good, and in that way make them responsible for the costs they involve so they do not impose those costs on others.³⁸¹ This awareness would obviously negate the possibility of being neutral in the distribution of the benefits over one's life.

6.3 Norman Daniels and the PLA

Like Dworkin, Norman Daniels does not think that justice between the young and old is simply a matter of justice between different age cohorts, but thinks that each age group represents a stage of our lives. He argues that the interpersonal problem of distribution between different people of different ages is morally equivalent to the intrapersonal problem of distribution between the different temporal stages of a single life, and it is this claim that leads him to the prudential lifespan account (PLA). Daniels is explicit that his theory is to be seen as an independent principle of justice and as an adjunct to Rawls' theory of justice. He also believes that the PLA rests upon fairly a non-contentious claim: that there is an important difference between

³⁸¹ Dworkin, 'Justice in the Distribution of Health Care,' p372.

distributive problems that cross the boundaries between persons on the one hand, and problems that involve allocations of goods between the different stages of a single life on the other. As such, Daniels makes the underlying assumption that the issue of distributive justice between the complete lives of separate persons is to be determined before the question of justice between age groups is addressed, and the former therefore has lexical priority. Daniels argues that by constructing a 'frame' to isolate the age-group problem from interpersonal transfers of goods, the theory is able to emphasise the importance of persons as separate entities. This assumption also represents the necessary acceptance of the CLV.

(i) The CLV and the PLA

Having framed the theory of justice between age groups the PLA adopts a partial Rawlsian 'veil of ignorance', which prevents the prudential agents from having knowledge of their social and economic status, their current age, conceptions of the good, and the expected length of their lives. It is from behind this veil that prudential agents determine the fair distribution of their diachronic shares over the course of their complete lives, though this 'partial' veil is more extensive than the one adopted by Dworkin.³⁸² However, as with Rawls' 'justice as fairness', there are some facts which the prudent deliberators are aware of in order that they may determine a just distribution. That is to say, they are aware of facts about general life expectancy in their society, important facts about the disease/age profile, and facts about patterns of

³⁸² One of Dworkin's criticisms of John Rawls' theory is that his veil of ignorance omits too much information regarding the individual's conception of the good, with the consequence that the theory cannot ensure that individuals take full responsibility for the costs that ensue from their chosen life-plans.

economic growth, and knowledge of people's usual needs for resources at different ages.³⁸³

Before discussing the principle of age group justice that these prudential deliberators will agree upon it is necessary to outline two further assumptions that condition the circumstances in which prudential deliberators decide, i.e. the standard theory of a maximising rationality; and the Requirement of Equal Concern. The first of these, the assumption of a maximising rationality, is based upon the central claim of the classical or standard theory of individual rationality. Derek Parfit describes this as the Self-Interest Theory, the central claim of which is:

(S1) For each person, there is one supremely rational ultimate aim: that his life go, for him, as well as possible.³⁸⁴

This central claim involves further claims, the most significant for our purposes being;

(S4) What it would be rational for anyone to do is what will bring him the greatest expected benefit.³⁸⁵

³⁸³ Daniels, *Am I My Parent's Keeper?: An Essay on Justice Between the Young and Old* (New York: Oxford University Press, 1988), p75.

³⁸⁴ Derek Parfit, *Reasons and Persons* (New York: Oxford University Press, 1984), p4.

³⁸⁵ *Ibid*, p8.

Together these two principles are what we can refer to as our maximising rationality, and, as Daniels notes, within the PLA, S4 will be aggregated over a complete life.³⁸⁶ That is to say the prudent deliberators behind Daniels' version of the veil of ignorance will choose the intrapersonal distribution that promises to maximise the greatest expected diachronic benefit. This is important because the policies that will bring greatest diachronic benefit may well be those that also create significant negative benefit at certain synchronic temporal periods, and this implication will be of relevance when we examine the various criticisms of the PLA below.

The second assumption that conditions the decision procedure is what Parfit has referred to as the Requirement of Equal Concern; that a rational person should be equally concerned about all the parts of his or her own future.³⁸⁷ This might also be called the age-neutrality principle because it assumes an attitude of moral neutrality towards the intrinsic worth of the different ages of a life. Such an impartial concern would mean that 'a smaller present good is not to be preferred to a greater future good'.³⁸⁸ We must therefore assume that prudent deliberators are concerned about their well-being over their complete lives, and are not more concerned with the success of one part of it than the others. Given these assumptions, Daniels argues, resources should then be distributed between people of different ages in the way that prudential agents would divide them over the corresponding temporal stages of a single life. Like Dworkin, Daniels believes that once the above conditions have been secured regarding the decision procedure, then '[w]hatever is prudent from this

³⁸⁶ Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996), p285.

³⁸⁷ Parfit, *Reasons and Persons*, p313.

³⁸⁸ Henry Sidgwick, *Methods of Ethics* (Indianapolis: Hackett, 1981), p381.

perspective constitutes what is just'.³⁸⁹ A synchronic question of justice between age groups at any temporal moment has therefore been reduced to a diachronic question of budgeting between the various temporal stages of one life.

The veil of ignorance that Daniels adopts differs from that of Dworkin in that it prevents the prudential deliberators from knowing their own conceptions of the good. This 'means they must not allow their deliberations to be biased in favour of what seems prudent merely from the perspective of the plan of life they have at a particular point in their life, say early adulthood.'³⁹⁰ The reason for this is that Daniels recognises that 'we revise plans of life, often in fundamental ways, as we age',³⁹¹ and if an informational constraint were not imposed upon prudential agents then there would be a danger that resources may be wasted on youthful projects leaving little for people in old age.³⁹² The fact that the informational constraint is imposed means that the PLA is not subject to the same criticism of the 'tyranny of youth' that can be levelled at Dworkin.

The PLA is a general principle that provides us with a way of thinking about the distribution of goods other than healthcare, such as income support. Indeed, the prescription of the PLA for income distribution and health care are different. While income distribution would be 'roughly equal', the distribution of health care resources

³⁸⁹ Daniels, *Am I My Parent's Keeper?* p92.

³⁹⁰ *Ibid*, p75.

³⁹¹ *Ibid*, p120.

³⁹² Clark Wolf questions the necessity for the imposition of the informational constraint on prudential deliberators. If they are rational and respect the Requirement of Equal Concern why would people favour their present projects whatever age they were? See Clark Wolf, 'Healthcare access, population ageing, and intergenerational justice,' p200.

would involve some inequality of provision and would justify some degree of age-based rationing. Daniels believes that medical and healthcare resources would be distributed to protect the 'age relative normal opportunity range' at every temporal stage of life, arguing that a central unifying function of healthcare is to maintain and restore functioning that is typical or normal for our species. Healthcare derives its moral importance from the fact that normal functioning has a central effect on the opportunities open to an individual, and by relieving illness and disease society may help guarantee individuals a fair chance to enjoy the normal opportunity range for their society.

The normal opportunity range for a given society is the array of life plans that reasonable persons within it are likely to construct for themselves. An individual's fair share of that range is the array of life plans he or she may reasonably choose given his or her talents and skills. Disease and disability shrinks that share from what is fair while healthcare protects it. This, Daniels suggests, means that we should use the impairment of the normal opportunity range as a fairly crude measure of the relative moral importance of healthcare needs. Because we have obligations to ensure people have a fair equality of opportunity, it means we also have social obligations to provide health care services that protect and restore normal functioning. Daniels argues that this range naturally contracts as we age with impairments to normal functioning and that, therefore, a 'prudently designed healthcare system will be responsive to facts about the types and frequencies of diseases and disabilities that emerge at different points in the lifespan'.³⁹³

³⁹³ Norman Daniels, *Am I My Parent's Keeper?* p77. It should be noted that the opportunity based theory that Daniels espouses cannot explain why long-term care should be provided in cases where disability is so severe that services do nothing to compensate for losses of normal functioning. These would be cases such as advanced Alzheimer's disease. For a critique of this problem see David

Daniels also argues that from behind the partial veil 'prudential deliberators would prefer a distributive scheme that improves their chances of reaching a normal lifespan (normal life expectancy) to one that gives them a reduced chance of reaching a normal lifespan but a greater chance of reaching an extended lifespan once normal life expectancy has been reached'.³⁹⁴ Thus, a policy of age based rationing would operate in circumstances in which scarce or expensive life-extending treatment could only be provided to those who have already reached a 'normal' life expectancy if by doing so we would need to restrict such treatment to the young. Nevertheless, while certain life-extending treatments would be restricted to the elderly, personal care and social support services are just as valuable for restoring normal functioning to older persons and would therefore be supplied to that age group. Thus, because Daniels believes that the lives of citizens as a whole will be better if we rationed resources by age, so, the equal rights to healthcare that individuals held over a complete life would nevertheless yield unequal entitlements at different points in their lives.³⁹⁵

What the PLA says about the intra-personal distribution of income is quite different, and it will be the prescriptions the PLA has for this rather than for healthcare that I will concentrate on in the rest of this section. The PLA would dictate that the prudent course of action would allocate resources in such a way that income would remain

DeGrazia, 'Grounding a Right to Health Care in Self-Esteem and Self-Respect,' *Public Affairs Quarterly* 5 (1991): 301-318.

³⁹⁴ Daniels, 'A lifetime approach to healthcare,' in *Ageing and Ethics* (Toronto: Humana Press, 1991), p239.

³⁹⁵ Daniels, *Am I My Parent's Keeper?* p81.

'roughly equal' over a lifetime in accordance with what Daniels calls the income preservation principle (IPP).³⁹⁶ Daniels argues that rational deliberations,

do not know the details of their plan of life and must instead reason about their well-being by reference to a Rawlsian index of primary social goods. The argument for this constraint, however, is not Rawlsian; rather, it is justified by an appeal to the classical theory of rational prudence. 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.³⁹⁷

The choice of the IPP would thus be motivated by the integration of three principles: firstly, that we have no intrinsic preference for one part of our lives over the others; secondly, that individuals would reason so as to maximise aggregate expected benefit (in line with the standard theory of rational prudence); and thirdly, that such individuals would be behind a partial veil of ignorance. The first two principles are those of rationality, the third is adopted to ensure that the conditions of the decision procedure are fair.

The Rawlsian difference principle permits inequalities between the separate lives of individuals provided that such inequality benefits the least advantaged. Thus, if we were to adopt the maximin reasoning for intrapersonal justice then rather than ensuring 'rough equality' it would allow income inequalities between the different stages of people's lives. Those inequalities would be permitted provided they made the complete lives of individuals maximally well-off (measured in primary social goods), and provided that they also benefited the stages of life in which people are likely to be worst off as a result of that inequality. By allowing such inequalities between persons society could provide incentives to the more talented to be

³⁹⁶ Ibid, p121.

³⁹⁷ Ibid, p120.

productive and thus raise the social product as a whole, benefiting all citizens. However, such building of the social product is not an obvious goal as far as intrapersonal justice is concerned, and this reasoning is therefore blocked by the assumption that lifetime shares of income have already been framed as fair shares. Individuals cannot therefore expand their lifetime income share by allocating it in certain ways, because such investment strategies are already accommodated within the notion of a lifetime share. Similarly, they cannot argue in favour of allowing inequalities in income levels between stages of their lives provided such inequalities in income levels work to make them maximally well-off (as measured by income) during the stages of their lives in which they are worse off

Therefore, because the problem has been framed it means that '[i]nequalities in income levels between the stages of life work only as a zero-sum game, making one period of life better off at the expense of another period or stage of life.'³⁹⁸ Thus, as a consequence, Daniels believes that 'the prudent course of action would be to allocate resources in such a way that income (standing proxy for the complete index of primary goods) would remain roughly equal over the lifespan'.³⁹⁹ If an individual could know that his plan of life contained preferences which at all stages of life would make an unequal distribution preferable (perhaps because it would increase lifetime satisfaction), then an unequal intrapersonal distribution would be a better one for that individual. But we cannot know that plans will cohere in this way, and we often fundamentally change our life plan as we age. It is this fact of uncertainty that leads

³⁹⁸ Ibid, p121.

³⁹⁹ Ibid.

Daniels to believe the IPP would be chosen: a principle that ensured people sufficient resources at each stage of their lives to pursue whatever plan of life they may have at each particular stage.

This then is how Daniels explains his conclusions. However, there are several criticisms that may challenge both the conclusions that he draws when deliberating on the assumption of the soundness of the CLV and the prudent analogy, but that also challenge the plausibility of the CLV itself.

(ii) Would Prudential deliberators reject the IPP?

The first set of criticisms that may successfully challenge Daniel's theory is to show that even if we accept his precondition of the CLV, and the standard assumption of a maximising rationality of self-interest, that rational deliberators behind the veil of ignorance would nevertheless not come to the conclusion of the (IPP). That is they would not distribute the finite life time share of resources 'roughly equally' across a life. In fact, it is at least arguable that in order to maximise expected benefit, or diachronic well-being, over our complete life it may be necessary to allocate disproportionate shares between younger and older selves, and it is consequently quite possible that, as Mckerlie claims, prudence 'would treat the very old harshly'.⁴⁰⁰

The claim would be that, given the goal of maximising diachronic well-being, there is reason to think that many people might rationally use the classical theory of practical

⁴⁰⁰ Dennis Mckerlie, 'Equality Between Age-Groups,' *Philosophy and Public Affairs* 21 (1992): 275-295, p287.

reasoning to favour a life that did in fact involve synchronic inequalities, even if by doing so they did not increase the total complete life benefits they could enjoy. The reason might be that in order to maximise diachronic well-being such benefits *require* unequal consumption throughout a life. Daniels does in fact point to this possibility himself. He claims some 'qualifications' are necessary to the IPP and that income distribution must be adjusted if it is to count as a measure of well-being at different points in the lifespan, because what we are really interested in is a person's 'standard of living'. But equal income levels at different stages of life may not represent equal standards of living. The example he uses is that if income spent on raising children, including advancing their educational opportunities, is at least part inelastic and represents a 'durable good' that produces benefits to parents over their complete lifespan, then we should readjust the post-retirement income levels of the parents by subtracting some portion of income to be spent on their children.⁴⁰¹ If we violate the IPP in the way Daniels suggests then this may not be enough to create or justify age discriminatory policies, but if we combine it with other likely reasons for detracting from the IPP then the aggregated consequences may result in a significant restriction of benefits from the old.

What then are these other possible reasons that prudential deliberators would fail to preserve sufficient resources for their old age as the IPP suggests they would. Firstly, individuals behind the veil of ignorance do not know how long they personally will live, although they do know the average life expectancy one can expect to enjoy within their society. If that average is something like 75, then they know that although they can expect to reach that age they are far less likely to reach 85, and quite unlikely

⁴⁰¹ Norman Daniels, *Justice and Justification*, p162.

to make 95. It must seem at least plausible then that rational deliberators about their own lives would not save very much for the slim possibility that they might live that long. While it might be prudent to save some resources for great age it certainly does not seem *imprudent* to decide not to save the same 'roughly equal' share of income at that life stage as every other. To do so would be to risk wasting a significant share of one's complete life resources.

This consideration does not violate the age-neutrality principle because it is not necessary to assume that the older life segments are of less intrinsic value than any other segment of one's life. An age-neutrality principle does not therefore prevent age discrimination. For the very old to be neglected it is only necessary to acknowledge that the prudential deliberators, behind a veil of ignorance, would know that they are very unlikely to live long enough to enjoy any benefits set aside for the very old age group.

A second reason that the PLA may not necessarily lead to the IPP is that people will often find it to be prudent to consume a greater share of their finite resources while young. As we have seen, Daniels stipulates that the budget to be distributed intrapersonally has already been framed by interpersonal justice, and that therefore prudential deliberators could not seek to expand their lifetime share by allocating it in certain ways, perhaps by investing in their human capital while young. Daniels believes that because such a disproportionate youthful allocation would not increase one's complete life share of resources that consequently people would not distribute it in that way. However, it does not seem necessarily irrational to consume more of one's resources while young, either in education or developing oneself in other ways,

even if it does not increase one's complete life earning power. For example, education, cultural experience and travel may increase one's diachronic well-being for psychological rather than merely materialistic reasons, and we might invest in them even if by doing so we reduced our lifetime shares. As we saw in the last section Dworkin is quite explicit that such considerations would justify restricting resources from the very old. It was a criticism that this would lead to ageist social policies. Daniels, on the other hand, seems to deny that such justifications would be considered.

A third criticism outlined by Mckerlie is a consequence of the calculations that would be inherent to a maximising rationality, which would mean that 'prudence will only save for old age if the sacrifice that such saving requires early in life is less than the eventual gain when the resources are used during old age.'⁴⁰² It is an unfortunate fact that with the onset of old age one's physical and mental powers usually begin to decline and this makes it more difficult to use one's resources to improve one's life. It is also increasingly unlikely that we would expect to want to 'radically revise' our conceptions of the good as we grow older, and while one reason might be that we would simply lack the energy and motivation, another reason is anticipated by Daniels himself in a footnote. Rationally prudent individuals may well discount their later years from the consideration of the *fecundity* of the benefits they can expect from them. Thus, Daniels acknowledges that,

if this is so, then, other things being equal, a later year is worth less than an earlier one because whatever opportunities for generating further benefits from activities pursued in a later year are less than those generated at an earlier year.⁴⁰³

⁴⁰² McKerlie, 'Justice Between the Young and the Old,' *Philosophy and Public Affairs* 30 (2002): 152-177, p160.

⁴⁰³ Daniels, *Justice and Justification*, p282, fn 1.

Again, however, it is not necessary that by favouring earlier years in this way we would violate the age-neutrality principle. It would simply not be a prudential calculation to invest as much in to the later temporal periods of our lives as the income preservation principle would suggest, given the overall goal of maximising the greatest diachronic benefit over a complete life.

These considerations suggest that it is quite plausible that given the conditions of Daniel's veil of ignorance, combined with his commitment to the CLV and the maximising rationality, that prudential deliberators would not choose his IPP. Indeed, rather than saving a roughly equal share of income for each stage of life it is quite plausible that the later stages will be neglected to some extent. Moreover, while each of these considerations might lead to only a small deviation from the IPP, taken together they may well collectively lead to justify a certain amount of age discrimination. One of Daniels' fundamental assumptions is that prudence should dictate justice, but if it is not imprudent to leave little for one's own very old age it does not necessarily follow that justice does not require society to provide a sufficient income for people who live to the age of 95 and beyond. This consideration points to the strong possibility that justice can not be simply reduced to the prudent decisions that individuals would make about their own lives. It might be thought plausible to suggest that social justice must take consideration of the fundamental interests of persons who are actually at that stage of their lives, irrespective of whether they would, in a hypothetical situation involving an informational constraint, have made provision themselves.

Therefore, as with Dworkin's theory, Daniels' use of prudence may justify egalitarian ageism. Nevertheless, there are other possible reasons for thinking that the PLA is significantly flawed.

(iii) Would Prudential deliberators reject the CLV?

So far, on the face of it, these criticisms do not refute the CLV, they merely dispute the conclusions that Daniels arrives at with reference to income distribution given his assumption of the CLV, a maximising rationality and a prudential analogy. However, the object of this thesis is not just to show the unfortunate ageist consequences of an adherence to these principles; it is also to refute the idea that the CLV is necessary or even plausible. It is quite possible that prudential deliberators behind a similar veil of ignorance to that which Daniels adopts would choose alternatives to the PLA that were not committed to the CLV. Indeed, people are not necessarily committed to the CLV, nor is it obvious that justice requires a commitment to it.

This section examines Daniels' methodological assumption of the CLV as a precondition of the PLA and outlines two important objections raised by Clark Wolf.⁴⁰⁴ As Wolf notes, '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',⁴⁰⁵ and that at first glance it might seem that this assumption is supported by the reflection that the total health care budget is finite.

⁴⁰⁴ Clark Wolf, 'Healthcare access, population ageing, and intergenerational justice.'

⁴⁰⁵ Wolf, p225.

However, the fact that the total social health care and primary social goods are finite is an entirely different and separate issue from the assumption that each individual is entitled only to an equal share of both. The conventional view, which both Daniels and Dworkin reject, accepts that social goods and distributive goods are finite, but argues that the overall budget should be used in a way that will minimize each person's expectation of suffering due to illness or disability by distributing these goods on the basis of need. If different people have different needs it is not obvious why it should not be appropriate to distribute goods unequally, and why to do so would involve an objectionable violation of the separateness of persons as Daniel supposes. Wolf argues that there is a plausible negative utilitarian alternative to the PLA, which is entirely consistent with Daniel's decision procedure, and that it would be seriously considered by rational deliberators. This alternative would be a form of contractualism, because it could be agreed upon along contractualist lines, and it would dictate that 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.⁴⁰⁶

This contractual negative utilitarianism (CNU) would not be vulnerable to the same objections that are levelled against simple utilitarianism or QALYs because it does not interfere with the principle of the 'separateness of persons': it does not aim at maximising aggregate or total utility. Rather, CNU aims to minimise each person's expectation for disadvantage, irrespective of their complete life share of goods, and it therefore implicitly rejects the CLV. The CNU would take 'need' as the only relevant criterion for health care distribution in the same way that the conventional view does.

⁴⁰⁶ Ibid, p226.

And as has been noted, it is this conventional view that Daniels and Dworkin reject. Unlike the CLV, therefore, the CNU would not sanction transfers from those already badly off to those quite well off, irrespective of how much a person had already enjoyed in their complete life, and it would not therefore justify egalitarian ageism. Therefore, '[t]o the extent that Daniels' scheme is different from the CNU, its implementation would involve an increase, for each person, in the expectation that she will suffer from ill-health and deprivation',⁴⁰⁷ and it must seem plausible that the CNU would at least be considered by rational deliberators. One might complain that this CNU is not fair because it does not give everyone an equal share of lifetime goods, but as Wolf argues, it is fair insofar as it might plausibly be chosen from behind the veil of ignorance, and it is procedurally fair in that it provides each person with an equally low expectation of suffering from disease or deprivation over their complete lives.⁴⁰⁸ The fact that it would not be absurd for rational deliberators to choose the CNU over the PLA seems to show that the methodological assumption that is central to the PLA, regarding the framing of age group justice within a general theory of social justice, is open to question.⁴⁰⁹

⁴⁰⁷ Wolf, 'Healthcare access, population ageing, and intergenerational justice,' p230.

⁴⁰⁸ There are other criticisms of CNU that advocates of the position like Wolf would need to address. Firstly, one standard criticism is that CNU would seem to argue for the painless killing of those who would otherwise suffer. Secondly, it would arguably give an implausible account of the trade off between different kinds of healthcare. For example, we want to treat the loss of hearing for individuals even though this would take resources away from other healthcare activities which deal with greater suffering, but CNU would seem to have a difficulty with this.

⁴⁰⁹ Another alternative to the principle of the PLA that Wolf believes might conceivably be chosen by prudential deliberators from behind a veil of ignorance is that of the sufficiency minimum (SM). His arguments for this are similar to those presented by Harry Frankfurt outlined in chapter 4, who believed that the SM would be chosen over Rawls' difference principle.

It seems clear, therefore, that not only would rational deliberators not necessarily choose Daniels' PLA even given the assumption of the CLV, but that the CLV itself would not necessarily be chosen given the nature of Daniels' veil of ignorance.

(iv) Is the PLA impractical?

Another criticism of the PLA is not that it would justify ageism, but that its commitment to the CLV makes it less practical in light of current demographic trends. As Paul Johnson argues, 'the PLA can only provide a guide to the distribution of resources between age groups if the treatment by age is consistent for successive birth cohorts'.⁴¹⁰ However, the benefit ratios (the ratio of benefits to contributions that individuals enjoy) have been falling for successive cohorts in recent decades due to a fall in the support ratio of employees to retirees. Indeed, this is one of the principal sources of intergenerational conflict, and it may be that because the size of successive generations varies in the real world, the PLA consequently fails. It is the very fact that rapid ageing has arguably undermined generational equity that motivates defences of egalitarian ageism, but it is also this very condition that potentially undermines the plausibility of the PLA.

Daniels argues that the PLA can solve the question of justice between different age cohorts by solving the problem of justice between age groups first, and that the latter will provide us with guidance as to how to solve the former. He believes that because each cohort will age through a society's institutions that they therefore each have an

⁴¹⁰ Paul Johnson, 'Population ageing, social security, and the distribution of economic resources,' in A. Harry Lesser (ed.), *Ageing, Autonomy and Resources* (Aldershot: Ashgate, 1999), p 155.

interest in establishing institutions that solve the age group problem. However, he recognises that such institutions must remain stable over time in order to function, while in practice they necessarily operate under conditions of uncertainty with demographic changes, varying economic growth rates, and technological changes affecting productivity. Each of these problems affects the level of resources that can be contributed to the income support system by each cohort and these will tend to challenge the fairness of the benefit ratios.⁴¹¹

There are essentially two practical methods of providing income support for the old. The pay-as-you-go (PAYG) system of state pensions is synchronic in the sense that each year's contributions from workers are used as that year's pensions to the retired. This synchronic system necessarily involves risk-sharing between age cohorts and an acceptance of some degree of variation in the benefit ratios that individuals enjoy. However, if we maintain a synchronic PAYG system in the current situation of a rising ratio of pensioners to workers, the cohort problem is that while the level of contributions will have to remain roughly the same the level of benefits to each individual will continue to fall. Rather than 'approximate equality', this will necessarily lead to an unequal ratio of benefits to contributions for all future participants.⁴¹²

⁴¹¹ Daniels is using pay-as-you-go (PAYG) scheme which involves transfers between age cohorts rather than a 'diachronic' scheme that relies directly on vested savings by each cohort exclusively for its own use.

⁴¹² The basic arithmetic of the PAYG system is that with an increase in the number of pensioners, and a decline in the number of workers supporting them, the workers would need to continue to contribute at the same relative tax rate (taxation to earnings) while the current net transfer of that income will be distributed amongst a larger number of recipients, thus providing a reduced level of benefits to each individual.

The alternative is a diachronic system and involves either separate individuals, or each cohort as a whole contributing towards their own separate stock of assets that accumulate through their working lives and are then drawn upon and run down in old age. Many in the intergenerational equity debate have argued that such a system should be adopted as a way of solving the perceived problem that exists today whereby the current old age group are drawing upon a larger share of benefits, financed by current workers, than will be available for the next cohort when it reaches old age.

Daniels is committed to a PAYG system, and he believes that the practical strategy for ensuring each cohort has a stake in such a scheme, and so is committed to supporting the relevant institutions that enforce it, is to ensure they enjoy 'approximate equality' in benefit ratios.⁴¹³ However, the upper and lower limits of approximate equality remain very much a potential source of conflict, and there is no overriding principle to determine how much deviation from equality is equitable. One might also question why distributive equity between birth cohorts should necessarily be defined in terms of equality of benefit ratios. Of course such a definition of equity is consistent with Daniels' wider assumption of the CLV which is not violated if each person contributes and receives roughly the same in benefits and contributions over his complete life. Nevertheless, inter-cohort equity might be defined instead as; equality of inputs (each cohort paying the same proportionate tax rate); equality of outputs (each cohort receiving the same proportionate pension); or equality of welfare results (each cohort of retirees having the same standard of living relative to

⁴¹³ Some compromises with this principle of approximate equality of benefit ratios will be inevitable in order to establish an institution that has the support of all cohorts, but there will be a bias in favour of early entrants who will enjoy higher benefits to contributions.

workers).⁴¹⁴ It is not obvious that defining inter-cohort equity as equality of benefit ratios, (and so justifying the CLV), is more fundamentally fair, or more likely to ensure that people are committed to the scheme.

Daniels suggests two possible strategies to refine benefit ratios to ensure a rough equality despite the challenges of demographic shifts. The first is to build a cushion of saved benefits while the ratio of workers to retirees is still relatively high, but this 'solution' is problematic because it is the very fact that the ratio is no longer high which is generating claims of unfairness in benefit ratios and fuelling the intergenerational equity debate. Daniels' second, and it would seem, principal suggested strategy is to alter the current employment and benefit policies that have until recently provided incentives for older workers to withdraw from the workforce while they are still physically and mentally robust. He argues that:

Pushing older workers out of the work force in periods of unemployment, when there are large numbers of young workers seeking employment opportunities, may have seemed an acceptable way to ration jobs by age, or it may have seemed an appropriate way to make room for better-educated and potentially more productive workers in technologically advancing economies. These underlying considerations should be reassessed.⁴¹⁵

Daniels' support for abolishing mandatory retirement ages therefore follows the contingent argument from efficiency as examined in chapter one of this thesis, and it is not therefore a point of principle for him that older workers should not be discriminated against. Daniels' suggestion of this strategy also supports Feldman's

⁴¹⁴ Johnson, 'Population ageing, social security, and the distribution of economic resources,' p158.

⁴¹⁵ Daniels, *Justice and Justification*, p280. Note, therefore that Daniel's support for abolishing mandatory retirement ages follows the contingent argument from efficiency as examined in chapter one of this thesis. It is not a point of principle for him that older workers should not be discriminated against.

argument (also in chapter one) that all spheres of potential age discrimination are in fact related.

However, regardless of whether these practical strategies are sufficient to maintain the synchronic method of income provision, there is a further criticism that can be raised against Daniel's claim that ratio benefits must remain 'approximately equal'. As we have seen, the conditions that Daniels believes are necessary for successive birth cohorts and age groups to be adequately committed to an income transfer scheme are; a rough equality of benefit ratios; for those ratios to be constant over time; and for that scheme to be governed by the IPP. However, benefit ratios may be roughly equal over a complete life and yet favour the young. That is to say that over a complete life a person might enjoy a rough equality between the benefits he has received to the contributions he has made, and yet may nevertheless receive more of those benefits during his youth and relatively few in old age.

(v) Is the PLA incompatible with Rawls' theory of justice?

It might be argued that Daniels cannot frame the problem of age group justice by Rawls' difference principle, because while the frame theory explicitly embraces the CLV, Rawls's theory can be understood as having a strong element of synchronic concern and therefore does not embrace the CLV. As free and equal citizens Rawls believes we each have two moral powers; the capacity for a sense of justice; and a capacity for a conception of the good. Citizens are defined as equal insofar as they are all regarded as having the essential minimum degree of the moral powers necessary to engage in social cooperation and to take part in society as equal citizens. Rawls is

generally considered to be a prioritarian rather than a strict egalitarian and, as we have seen, his difference principle permits some inequalities provided they act as incentives for the talented and that they be arranged so as to be of greatest benefit to the least advantaged.⁴¹⁶ These inequalities are measured by the differences in citizens' (reasonable) expectations of primary goods *over a complete life*.⁴¹⁷ The primary social goods are the various social conditions and all-purpose means that any rational person would want whatever their conception of the good might be, and those who have least access are defined as the 'least advantaged group'.

The index of primary social goods is drawn up by asking what things, are required by citizens to maintain their status as free and equal and to be normal, fully cooperating members of society. Since the prudential deliberators know that an index of primary social goods is part of a theory of justice they will not accept principles unless that index secures what they think is required to protect their essential interests. What will be required, therefore, is a minimum standard of essential benefits (primary goods or resources) necessary for individuals to continue to be fully cooperating members of society over their complete lives, and this arguably must include each consecutive synchronic moment.

The fundamental question for this section is whether these primary social goods are to be distributed according to the CLV, in which case the distributive shares would be

⁴¹⁶ Rawls, *A Theory of Justice* Revised Edition (Oxford: Oxford University Press, 1971, 1999), p266. Of course the second principle of Rawlsian justice includes the requirement that social and economic inequalities should be attached to offices and positions open to all under conditions of fair equality of opportunity, and this is of significance to the question of ageist employment practices.

⁴¹⁷ John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), p57. (Italics added).

allocated diachronically, or should they rather be allocated synchronically? We have already seen in chapter 5 that Rawls is generally assumed to distribute primary social goods diachronically though we also said that a synchronic distribution was quite plausible. Nevertheless, the way in which these goods are to be distributed within a Rawlsian society would in turn depend upon the way we define the membership of the 'least advantaged' group in society, i.e. should the individuals who incorporate this group be defined as such diachronically or synchronically. Would we define a person as being in that group as a measure of their complete life, or could someone be a member of that group at one point in their lives and not be a member at some other point. The question is important in that if we are to apply priority to the worst off diachronically then we would need to allocate benefits to those who, over a complete life, are worse off than others. If we take the synchronic view then we need to allocate benefits to those who are worse off than others at a temporal moment, regardless of how well off they have been in the past or are likely to be in the future. There is no reason to assume, as we have seen Derek Parfit does, that 'there is no difference between those who would be worse off at a time, and those who would be worse off in their lives as a whole.'⁴¹⁸ There seems nothing absurd about the possibility of someone being a member of the synchronically worst off group but not a member of the diachronically worst off group.

If we look at the example below, we can imagine two very old men (members of what is often called the 'old old' group) who are now in their last stage of life at T5. Person A has been quite well off for most of his life, but towards the end his savings have run

⁴¹⁸ Derek Parfit, 'Equality or Priority?', in Matthew Clayton & Andrew Williams (eds.), *The Ideal of Equality* (Hampshire: Palgrave Macmillan, 2002): 81-125, p103.

very low and he becomes very poor. He is now a member of the synchronically worst off group. Person B, on the other hand, has been one of the worst off for all his life, but he is now slightly better off than he has ever been in the past and not as badly off as Person A. Thus, although person B is a member of the diachronically worst off he is not a member of the synchronically worst off. And for person A the position is reversed.

	T1	T2	T3	T4	T5
Person A	30	30	30	25	5
Person B	10	10	10	10	15

If we think that membership of the 'least advantaged' group is diachronic in nature then we would give the not so badly off person B priority over person A, while if we think of it as synchronic we would give priority to person A over person B. From a diachronic perspective we could imagine that the worst off group comprises those persons who on average have an income of 10 or below, or from a synchronic perspective to include those who have an income of 10 or below within any particular temporal period. This is obviously an important question for distributive justice generally, and for the question of egalitarian ageism I have outlined in this thesis.

To determine who comprises the 'least advantaged' we can examine Rawls' understanding of how the index of primary social goods (PSGs) applies to persons. It would seem from some readings of 'justice as fairness' that the allocation of primary

goods should be in terms of equal amounts over a complete life. However, there are several reasons why the index should also have a concern for synchronic allocation. In effect Rawls assumes that there should be a social minimum of the PSGs sufficient to maintain and exercise our two capacities below which people should not be allowed to fall, and he is not concerned, or believes it is not possible, to take account of the distribution of the primary goods above that minimum (accept that further increases in inequality will not be permitted unless they are to the benefit of the least advantaged). To illustrate this we can use Rawls' own discussion about the distribution of health and medical care, which itself constitutes a primary social good.⁴¹⁹ These are cases which are characterised as ones 'in which citizens fall temporarily – for a period of time – below the minimum essential capacities for being normal and fully cooperating members of society'.⁴²⁰

Now Rawls starts out by saying that 'the index of primary goods is an index of expectations of these goods *over the course of a complete life*',⁴²¹ and that these expectations are viewed as attached to the relevant social positions within the basic structure of society. But this enables the two principles to allow for the differences in need arising from illnesses and accident over the normal course of a complete life.

Therefore;

Individuals' expectations of primary goods (their index) can be the same ex ante, while the goods they actually receive are different ex post, depending on the various contingencies – in this case, on the illnesses and accidents that befall them.⁴²²

⁴¹⁹ John Rawls, *Justice as Fairness: A Restatement*, pp171-5.

⁴²⁰ Ibid, pp171-2.

⁴²¹ Ibid, p172.

⁴²² Ibid, p173.

Thus, we see how the medical and health needs of citizens should be allocated to them on the basis that they are normal cooperating members of society ‘whose capacities for a time fall below the minimum’.⁴²³ There is an important claim I want to make about this. The ex ante distribution would in principle follow the CLV, and so would distribute goods (based upon the principle of priority) across a life. But, because Rawls’ theory takes urgency of one’s claims as morally important, the ex post distribution would be based upon a synchronic concern for the temporal needs of persons. Social justice would thus recognise urgency as pertaining to those needs whose satisfaction should be given synchronic priority. What this also means is that the membership of the least advantaged group would be constituted by those who are worse off at a time rather than those who, on balance, would be worse off over a complete life. The difference principle covers those needs of persons up to the point at which further provision would lower the expectation of the least advantaged, and in this way we can fix the level of the social minimum.⁴²⁴ Once again the same (diachronic) expectations ex ante are comparable with widely divergent benefits received depending upon differences in need ex post.

We see the importance of using a political conception of the citizen as having a public identity over a complete life as fully cooperating members of society, because the representatives behind the veil of ignorance must view the various claims,

including those we make in all phases of life from childhood to old age – from the point of view of one person who is to live through all phases of life. The idea is that the claims of those in each phase derive from how we would reasonably balance those claims once we viewed ourselves as living through all phases of life.⁴²⁵

⁴²³ Ibid.

⁴²⁴ See J. Rawls, *A Theory of Justice*, section 44.

⁴²⁵ Rawls, *Justice as Fairness: A Restatement*, p174.

This may sound like Daniels, and indeed, Rawls refers to Daniels in a footnote, but what Rawls' examination of people's various claims is certainly not committed to is the CLV. It does not use a 'frame theory' of the set share of 'fair' diachronic benefits and then view justice only as a matter of how prudence would distribute those resources within a complete life. Rawls talks about 'a balance' of claims, and that suggests that older persons will have legitimate claims for resources which compete with claims for the same goods by younger persons. Thus, the question of justice between the young and old remains an *inter*-personal rather than a purely *intra*-personal one. Rawls argues that the strengths of claims to medical care should be regarded 'as tied to maintaining our capacity to be a normal member of society and restoring that capacity once it falls below the minimum required'.⁴²⁶

We might also note that if the theory of moral psychology outlined in chapter 2 (section 2) is sound then it too has important implications for the Rawlsian form of contractual justice. If prudent agents deliberated upon the just principles of justice from behind a veil of ignorance, while they were at the same time aware of the divided nature of their self-interest, then it is not absurd to suggest that they would choose principles that ensured a level of synchronic well-being sufficient for individuals to maintain their capacity to be normal members of society. This possibility seems to be strengthened when one remembers Rawls' own *strains of commitment* requirement that stipulates that the principles of justice on which individuals agree within the original position must be ones they can remain committed to once they are put into effect. And it would seem difficult for many older people to

⁴²⁶ Ibid.

remain committed to distributive principles that left them destitute during the synchronic period of their old age.

Thus, someone may have required benefits all his life to be maintained at the minimum required, and yet he would still have a legitimate claim to assistance when very old in order that his fundamental capacities and highest order goals in life be protected. That is to say those capacities to exercise a conception of the good life and to have a sense of justice. So if we were to ask whether the ex ante diachronic consideration would constrain the ex post synchronic consideration, a condition necessary for the CLV generally and for both Dworkin's and Daniels' theories, the answer from Rawls would be no. My claim therefore is that while Daniels and Dworkin apply prudence to the internal allocation of a fair share of diachronic resources in one life, Rawls' maximin egalitarianism is concerned with the relationships that exist between lives on a synchronic basis. The diachronic ex ante distribution would merely be a guideline, but it could not constrain the synchronic ex post distribution, or else this would conflict with the understanding of who constitute the membership of the least advantaged group.

What, if anything Rawls would have to say about egalitarian ageism is not strictly relevant to this chapter. What is important is whether Daniels can frame his theory of justice between age groups with Rawls' difference principle. For him to be able to do this, Rawls' difference principle would have to operate diachronically, and only then could Daniels embrace the CLV on which the PLA is premised. However, if the membership of the 'worst off group' can plausibly be synchronic, then the difference

principle cannot operate in a purely diachronic way, and Daniels' version of the PA is flawed as a result.

6.4 Concluding remarks

The PA is a logical adjunct to the CLV and has been adopted by two of the most prominent contemporary political philosophers. I have argued that both versions of the PA have ageist implications, but while those implications might be fairly explicit in Dworkin's version, they would be unintended within that which Daniels espouses. I have also argued that prudential deliberators, from behind a veil of ignorance, would not necessarily accept the CLV, and that Rawls' theory of justice in fact has a significant element of synchronic concern for the needs of citizens. Arguably, therefore, the difference principle is not committed to the CLV. If this claim is sound, then it provides another reason for thinking Daniels' PLA is flawed.

Chapter 7: Towards a non-ageist social equality

The purpose of this final chapter is to examine the non-ageist and anti-ageist implications of the theory of democratic egalitarianism (DE) outlined in chapter 4, and of its principle that we should equalise social relations (ESR). Not only would DE not permit the egalitarian ageism we have shown to be a consequence of distributive luck egalitarianism, but it would also actively challenge either form of ageism wherever it existed. It is therefore my argument in this chapter that anti-ageists should at the same time be advocates of this form of social equality. The sections within this chapter argue that the values that are thought to underline the CLV can either be effectively challenged or else incorporated within DE. It is important to note here, though, that DE remains only a sketch of a theory, and that further refinement will be necessary.

7.1 DE, 'fairness', and the anti-ageist ethic

Chapter 4 outlined the major questions to which distributive egalitarians typically attempt to find answers, and the way a particular theory addresses these questions determines whether or not it will condone ageist social policies. The fundamental question is the unit for which a theory has egalitarian concern, and in this regard LE embraces the CLV. It does so for two fundamental reasons. Firstly, diachronic equality is perceived to be the fairest distribution because it provides equal opportunity for everyone to make of their lives what they wish. Secondly, the CLV protects the principle of personal responsibility and ensures that individuals are held fully accountable for their choices. The responsible are prevented from having to

carry the costs of other people's idleness and foolish choices, and this provides strong incentives for individuals to be economically prudent and productive. A combination of 'fair' diachronic equality and personal responsibility is mutually supportive because the former is maintained by requiring people to carry the costs of their own choices. Any theory that challenges the CLV must respond to these two justifications, and in this section I start by challenging the idea that we should adopt the view on the grounds that it is fair. I then argue in the following sections that we do not need to be committed to the CLV in order to protect the principle of personal responsibility.

The commitment to the CLV justifies ageist policies against the old, but it does not actually require them, and I have outlined these implications in section 4.5.⁴²⁷ Nevertheless, once an egalitarian theory is committed to the CLV it would be a logical step for it to adopt a prudential analogy (PA) as an adjunct to this, and in chapter 6 we saw how a combination of the CLV and the PA plays an integral part within the theories of Dworkin and Daniels. A PA seeks to illustrate how a rational individual with an equal complete life share of benefits would distribute that share intra-personally across his or her life, and to determine how rational individuals would insure themselves against poverty or ill health and how much they would save for old age. The PA is built upon the premise that fairness and justice should be guided by prudence, but it nevertheless leads to ageist social policies.

I have argued that what is needed to challenge ageism is a principled position that both defends anti-ageist policies on non-contingent moral and political grounds, and which is consistent with egalitarian political theory. The anti-ageist ethic that I have

⁴²⁷ I have also pointed out that the CLV might justify discrimination against the young as much as it does against the old.

defended begins with an account of the divided nature of a person's self-interest in the sense that each individual has both synchronic and diachronic interests. This distinction between the different interests of persons is not normally made. Rather, people's interests are often assumed to be only diachronic in nature, and this assumption helps support the CLV. Nevertheless, it has been my claim that each person has particular fundamental synchronic interests that are not reducible to the diachronic, and that political morality ought to satisfy these irrespective of a person's past well-being or their chronological age. Policies that do not respect the fundamental synchronic interests of the old are ageist and wrongful. This then constitutes the anti-ageist ethical position. A further claim might be that policies which neglect or violate those synchronic interests during any part of a person's life would thereby deny their personhood at that time, and it is this latter notion that philosophers like Oliver Leaman are appealing to when they claim that ageism is 'no less vicious a form of discrimination than sexism and racism.'⁴²⁸

The response of the anti-ageist to the fairness justification of the CLV, therefore, is to point out that a distribution that is understood only in diachronic terms will cater only for diachronic interests, and this will override and ignore the synchronic interests of persons. However, the problem for anti-ageists is that because diachronic and synchronic interests are irreducible there is no way to determine which should take priority in any particular situation. It is the synchronic interests of the old that anti-ageists wish to protect, but by itself this free-standing ethical principle that synchronic interests have moral weight may not be sufficient to successfully overrule all egalitarian justifications of ageism. And it is for this reason that part of my aim in this

⁴²⁸ Oliver Leaman, 'Justifying Ageism,' in A. Harry Lesser (ed.), *Ageing, Autonomy and Resources* (Aldershot: Shgate, 1999), p187.

thesis is too locate that ethic within a broader political egalitarian theory, that of DE, because it is only in that way that we can consistently pursue non-ageist public policies.

The core value of DE is a normative view concerning the nature of the social relations that exist between citizens at any moment rather than any particular distribution of benefits, and the relevant questions for the advocates of this position are to ask what social, political and economic arrangements are compatible with that conception.⁴²⁹ Advocates of social equality have argued that it is more fundamental than distributive equality, and that the latter should be constrained by the former. Thus, distributive inequality is only significant for DE to the extent that it creates an inequality of power.⁴³⁰

However, while distributive equality would seem easy to measure, equalising social relations seems a far more complex proposition. Nevertheless, as noted in chapter 4, one way in which we can make sense of the principle would be through the application of an interpersonal test similar to G.A. Cohen's concept of comprehensive justification.⁴³¹ That concept requires that in order for a policy argument to be comprehensively justified it pass a test that 'asks whether the argument could serve as a justification of a mooted policy when uttered by any member of society to any other

⁴²⁹ Samuel Scheffler, 'What is Egalitarianism?' *Philosophy and Public Affairs* 31 (2003): 5-39, p27.

⁴³⁰ See, for example, Richard Arneson, 'Luck Egalitarianism and Prioritarianism,' *Ethics* 110 (2000): 339-349, p340.

⁴³¹ G.A. Cohen, 'Incentives, Inequality, and Community,' in Stephen Darwall (ed.) *Equal Freedom: Selected Tanner Lectures on Human Values* (Ann Arbor: The University of Michigan Press, 1995): 331-398. Anderson adopts the concept of comprehensive justification to only apply to the economy, but the way Cohen presents it suggests it would be relevant to any social context.

member.’⁴³² Any justification of age discrimination would only be justified if it passed this interpersonal test. Discrimination based upon cultural ageism would obviously not be justified, but the importance of certain fundamental synchronic interests would also mean that age discrimination based on arguments for diachronic equality might also be unjustified in this comprehensive way. A mooted policy that had the effect of harming the synchronic interests of older persons would not receive their support when it was proposed to them, and it would not therefore be comprehensively justified. The CLV and its justification of ageism would not therefore be compatible with the political and social ideal of DE.

But that the test of comprehensive justification would not be passed in this instance serves to underline the fact that if an ageist policy were implemented it would manifest itself by creating conditions of social inequality between citizens. It is these conditions of social inequality that the test exists to prevent. However, the only form of discriminatory policies that are likely to be permitted by DE and its interpersonal test are those that benefit the *synchronic* interests of all contemporaneous citizens. One example of this kind of discrimination noted above is that of the flu vaccinations that are offered only to the old.

I have argued that the CLV has been justified on the grounds that it is fair, and I have presented the responses to this claim from the anti-ageist ethical position as well as the democratic egalitarian interpersonal test. However, even if we accepted that the CLV was underpinned by the value of fairness there is another argument that may still weaken the plausibility of the CLV. Jonathan Wolff argues that fairness is not the

⁴³² Ibid, p348.

only important egalitarian value, but rather that it is only one part of a social egalitarian ethos.⁴³³ Wolff outlines a social ethos that incorporates the dual values of respect and fairness which he believes best captures the essence of egalitarianism, and he acknowledges that the two values may sometimes conflict. He claims further that other egalitarian values like respect and self-respect would be compromised by the adoption of what he calls a monist or lexical priority theory that views fairness as either the only or the priority value. And he characterises the LE version of distributive egalitarianism as just such a monist theory. However, if fairness is not the only value that an egalitarian theory ought to protect then there is reason for certain forms of distributive unfairness to be tolerated to the extent that they help to preserve a society of respect for all.⁴³⁴ To guide policy by this ethos would again seem to require some intuitive balancing because there is no overriding principle to determine which value has priority. But to insist on 'fairness' alone would, on Wolf's view at least, not be an adequately egalitarian approach. Therefore, the requirement that we ensure the social bases of self-respect for individuals, and the requirement that people's fundamental basic needs should never be neglected, both mean that a certain amount of inequality of complete life benefits ought to be tolerated. The CLV would be violated by both requirements.

Thus, there are three arguments against the fairness justification of the CLV: the anti-ageist ethic that emphasises fundamental synchronic interests; the normative principle that social relations should be equal (expressed through a test of universal justification); and the claim that fairness is not the only fundamental value of the

⁴³³ Jonathan Wolff, 'Fairness, Respect, and the Egalitarian Ethos,' *Philosophy and Public Affairs* 27 (1998): 98-122.

⁴³⁴ *Ibid*, p119.

egalitarian ethos. However, we now need to examine DE in more depth to see how it recognises the importance of individual responsibility, and how it does so without embracing the CLV. And for this we must first look at the form of economic distribution that DE would defend.

7.2 DE and economic distribution

In chapter 5 we found that within distributive egalitarianism there are two alternatives to the diachronic CLV: the synchronic view; and the hybrid view. The synchronic view is morally problematic because if we compensate inequality at each temporal moment then we weaken the requirement that individuals be personally responsible for the success of their lives. The hybrid view (combining both synchronic and diachronic dimensions), which I have argued is the most morally plausible view, is nevertheless problematic in a practical sense because there is no overriding principle to determine whether the diachronic or synchronic distribution should take precedence. Again we seem to be faced with the need for an intuitive balancing that is always messy. The hybrid distributive view parallels the divided nature of a person's self-interest in which the synchronic and diachronic are irreducible to one another, as well as Wolff's claim that egalitarianism requires the two potentially conflicting values of fairness and respect.

However, it is also the hybrid model of distribution that I believe is closest to the aspirations of DE. DE, as a form of social rather than purely distributive equality, requires the social relations between persons to be equal at each temporal moment as well as between their complete lives. The issue is to find a coherent distributive

system that reflects such social equality. We might first look at the distributive implications suggested by the irreducibly dual nature of our self-interest, and of the anti-ageist ethic. The anti-ageist ethic involves acknowledging the moral force of each person's fundamental synchronic interests, and so requires at least the basic needs of the old to be provided by society regardless of each person's complete life share. At the same time the anti-ageist ethic would not condone an exclusively synchronic distribution because the diachronic interests of a person must also be protected and should not to be overruled by her synchronic interests. As we noted in chapter 2, many of our diachronic interests rely for their fulfilment on the precondition that we can plan the development of those interests over time. The very fact of having diachronic interests, therefore, presupposes a capacity for personal responsibility. And an exclusive concern for synchronic distributions would undermine the ability of citizens to plan and develop their diachronic goals.

It is my claim that Anderson's account of DE provides the social conditions necessary to meet the distributive implications of both dimensions of our self-interest. The moral force of the synchronic interests of persons are represented by Anderson's first desiderata for egalitarian principles which is to identify certain goods to which all citizens must have effective access over the course of their whole lives.⁴³⁵ On the other hand, in recognition of the importance of personal responsibility Anderson makes it another specific desideratum for any adequate theory of egalitarian justice that its principles 'should uphold the responsibility of individuals for their own

⁴³⁵ Elizabeth S. Anderson, 'What is the Point of Equality?' *Ethics* 109 (1999): 287-337, p314.

Anderson actually lists five desiderata for egalitarian theories, of which the two discussed here are the first and fourth respectively. However, as Anderson's other three desiderata are not directly relevant to this discussion I will refer to the two I discuss as the first and second.

lives'.⁴³⁶ This latter desideratum would also in part acknowledge the importance of incentives for people to work and thereby provide the tax revenue to fund the synchronic benefits necessary to ensure that each citizen remains above a sufficiency minimum. DE would not allow exclusively synchronic distributions to take precedence over diachronic for the reason that such a policy could not be comprehensively justified. If a policy was proposed that would repeatedly compensate the irresponsible for the losses they incurred for bad option luck at each temporal moment, then those citizens that took responsibility for their lives would not readily endorse it. Such a policy would reward the lazy and culpably irresponsible, and would not be compatible with incentives for people to be productive.

However, in order to fulfil the two desiderata to which she is committed, and which represent both the synchronic and diachronic interests of persons, Anderson believes that democratic egalitarians should adopt a version of the capabilities metric.⁴³⁷ In the following two sections I examine first how the capabilities metric fulfils the desiderata that citizens should have synchronic access to certain goods throughout their lives, and secondly, how that metric also fulfils the diachronic concern that people have responsibility for the success of their lives.

7.3 DE, capabilities and synchronic well-being

In line with her first desideratum, Anderson argues that certain functionings are of special egalitarian concern because they constitute the necessary social conditions of

⁴³⁶ Ibid.

⁴³⁷ Ibid, p316.

freedom for individuals. And so the private and public goods necessary to facilitate those functionings should be provided to individuals as a matter of justice. Moreover, because Anderson believes that the victims of bad option luck should continue to have access to these goods despite their earlier poor or unlucky decisions, equal access to these particular goods should be guaranteed over the complete lives of citizens. I have argued above that the capabilities metric is synchronic in its application because the functionings it guarantees have a synchronic dimension.

But what particular functioning sets would a non-ageist DE guarantee access to? As we noted earlier, one problem of the capabilities metric is how we determine those functionings that justice requires society to supply. However, we have recognised the importance of the fundamental synchronic interests each person has to having their basic needs met, to autonomy, and to the social bases of self-respect. It would seem, therefore, that any plausible account of equality within the space of capabilities should include at least these three. Moreover, the ‘social conditions of freedom’ that Anderson outlines involve two conditions; those conditions that are necessary to enable individuals to avoid oppressive social relationships, and those necessary for them to function as equals in a democratic state.⁴³⁸ If it makes sense that we might be oppressed at one point in our lives and not at another then it also makes sense to think of these social conditions of freedom as having a synchronic dimension. Because Anderson is seeking to defend those who have suffered bad option luck it is precisely because the capability metric does have a synchronic dimension that she adopts it for DE.

⁴³⁸ Ibid, p313.

Anderson believes that for the social conditions of freedom to be met there must be a guaranteed access for individuals to capabilities both within the public sphere such as political rights but also within such institutions of civil society as hospitals and public and private 'enterprises engaged in production'. This involves a right of citizens not only to participate in the political sense but also within the economy, and to not be discriminated against within healthcare or the workplace. As these social conditions are guaranteed over the complete life such rights do not diminish as citizens age. Anderson maintains that any individuals that are excluded from these institutions of civil society or segregated within them, or who are subject to discrimination on the basis of an ascribed social identity by such institutions, have been effectively relegated to a second-class citizenship.⁴³⁹ This discrimination would be incompatible with DE, or the ideal of social equality that it gives expression to, and these requirements would then place constraints on the type of distributive system that would be permissible.

Anderson distinguishes three aspects of individual functioning: functioning as a human being, which involves having one's basic biological needs fulfilled; functioning as a participant in a system of cooperative production, which provides a qualified right to worthwhile employment; and functioning as a citizen of a democratic state, which guarantees one's political rights and liberties. To function as a human being involves those basic needs that sustain biological existence and include food, shelter, clothing, medical care, and access to what Anderson calls the basic conditions of autonomy (i.e. knowledge of one's circumstances and options, the ability to deliberate, and the self-confidence to think and judge for oneself). Such a

⁴³⁹ Ibid, p316.

requirement would protect the basic needs of older citizens against the justification of certain ageist policies. To function as a citizen not only includes political rights but also the ability to appear in public without shame and not being ascribed outcast status. Part of the necessary preconditions for such functioning would be the challenging of negative cultural stereotypes and would give justification to the advocacy strategy outlined in chapter 3. To participate within a system of cooperative production involves having access to meaningful employment, and to the training and education necessary to develop one's talents, whatever one's age.⁴⁴⁰

7.4 DE, anti-ageism, and personal responsibility

How then does DE fulfil a concern for synchronic well-being and at the same time ensure personal responsibility? As we have seen, DE guarantees what amounts to a sufficiency minimum (SM) involving effective access to the social conditions of freedom to all citizens over their entire lives.⁴⁴¹ Thus, while LE only insures citizens against certain kinds of loss (i.e. disadvantages that are the result of brute bad luck), DE only insures citizens against the loss of certain kinds of goods (those necessary to maintain equal social relations, or the social conditions of freedom). As far as the state is concerned, the two alternative policies of LE and DE may turn out to cost

⁴⁴⁰ Anderson believes that citizens should regard every product of the economy as jointly produced by everyone working together. This involves recognising that those that occupy more productive roles in the economy owe that productivity partly to the fact that they have been freed by others from the need to spend their time in low skilled tasks. Such reflections undermine the notion that workers at the top make more of a contribution to the economy, and so deserve a far greater share of the product, and this sets limits to the levels of tolerable inequality.

⁴⁴¹ We have previously noted in chapter 5 that many people might criticise the SM by asking why inequalities beyond a threshold are not deemed to be morally undesirable per se. The response of DE is twofold. Firstly, economic equality has been an objective of very few egalitarian social movements from the suffragettes to those promoting the rights of the disabled. Secondly, economic inequality is only important to the extent that it can be translated into inequality of power, and the one does not presuppose the other.

approximately the same, but critics will argue that maintaining the SM is too costly for those who have been prudent. This is because the prudent must part with some of their income in order to contribute to the safety net for the culpably irresponsible.⁴⁴² The SM might thus be said to be too expensive because it does not sufficiently encourage personal responsibility, and there are two reasons why an adequate political and moral theory should encourage that moral virtue; firstly, responsibility has intrinsic value in itself (i.e. it is good if people show responsibility for their lives); and secondly, personal responsibility is thought to be necessary from a practical perspective in order to prevent the indigent from bankrupting the state.

In response to this criticism, advocates of DE would argue that personal responsibility for the success of one's life is in fact respected within Anderson's account of DE. It does so because DE does not indemnify individuals against all losses that result from imprudent behaviour; it only guarantees an agreed set of capabilities that are necessary for a person to function as a free and equal citizen, and to avoid social and cultural oppression. If, as a consequence of their free choices, individuals lose their access to capabilities over and above the basic guarantees then they carry the costs themselves.

Another strategy that DE adopts for promoting the responsibility of individuals is that it only guarantees *access* to the SM, individuals still have to exercise responsible agency in order to *achieve* most of these functionings. This means that people

⁴⁴² This point is made by Richard J. Arneson, 'Luck Egalitarianism and Prioritarianism,' *Ethics* 110 (2000): 339-349, p347. Arneson defends what he calls Responsibility-Catering Prioritarianism (RCP) which he believes is immune to the criticisms that Anderson levels at LE, but is morally more compelling than her account of DE. However, his elaboration of RCP is too brief to make a fair comparison with the DE defence of anti-ageism outlined in this thesis.

continue to have an incentive to act prudently, to work and invest wisely, if they wish to have more comfortable lives. And most people will. Moreover, while each able-bodied adult would have a guaranteed access to a decent income, there may nevertheless be conditions within the community necessary for her to fulfil in order to access that income, and these obligations would be such things as functioning either within the private sphere of the family (i.e. bringing up children) or the public sphere of the workplace. Thus, DE guarantees not *actual* levels of functioning but effective *access* to those levels, and individuals can choose to function at a higher level if they wish by working harder for more income.⁴⁴³ DE is therefore consistent with constructing the incentive structure required to support a modern economy, which, in turn, is needed in order to promote the production and growth necessary to provide egalitarian guarantees in the first place. Furthermore, the DE guarantees are not necessarily effective access to *equal* levels of functioning, rather they are merely levels sufficient to stand as an equal in society. In some areas of functioning distributive equality is required '[f]or example, each citizen is entitled to the same number of votes in an election as everyone else'.⁴⁴⁴ On the other hand, equal diachronic shares of impersonal resources are not necessary.

Nevertheless, critics might still argue that these conditions are insufficient to ensure an adequate level of personal responsibility. The reason that Anderson's theory guarantees access to a set of capabilities is to ensure that those who make foolish choices in their lives do not pay a price disproportionately heavy and end up destitute. She does not believe many people would find this just. However, the question arises

⁴⁴³ Ibid, p318.

⁴⁴⁴ Ibid.

as to what society should do about those who are incorrigibly irresponsible. David Sobel notes that DE guarantees 'effective access to the social conditions of freedom to all citizens regardless of how imprudently they conduct their lives',⁴⁴⁵ and that this means that those societal guarantees must be forever owed to whoever lacks such capacities at any time and for whatever reason.⁴⁴⁶ Sobel imagines the example of someone who has lost her legs through some 'crazy risk' and who now repeatedly sells the wheelchair provided by the state on the black market, and then presumably squanders the money. However, each time she sells the means to her mobility she again lacks that capability, and this, Sobel complains, means that society is repeatedly obliged to replace that wheelchair.⁴⁴⁷

One way that DE might avoid this implausible obligation would be to extend the use of the principle of universal justification, beyond the context of the economy to which Anderson restricts it, to include all contexts of social relations as I suggested above. It might be possible for those who have suffered bad option luck to formulate a plausible argument in favour of a policy that ensured their basic synchronic needs continue to be met, but it is less likely that the culpably irresponsible wheelchair user could plausibly construct an argument in defence of a policy that ensured that she have a replacement wheelchair each time she sold the last one. Ultimately, therefore,

⁴⁴⁵ Anderson, p326.

⁴⁴⁶ David Sobel, Comment on Anderson,

⁴⁴⁷ What Sobel may have overlooked, at least as far as his example is concerned, is that under DE, citizens refrain from making intrusive moralising judgements about how others ought to have used their capabilities (and the means to enjoy them that are provided by the community), but that '[t]he sole exception to this principle concerns criminal conduct' (Anderson, 'What is the Point of Equality?' p327). The repeated selling of a community provided wheelchair on the black-market would not only be culpably irresponsible, it might also be plausibly deemed criminal. One might suggest that in this example, and many others we could think of, DE would not be obligated to replace the squandered item.

this extended use of the principle of universal justification would involve the making of moralising judgments. But these moral judgements would not be those made by government officials on the basis that a disadvantage is the result of either option or brute luck, rather they would be made on the basis that few of one's fellow citizens would think such a policy is justified. There comes a point at which citizens could no longer justify a policy allowing the culpably irresponsible to squander the community's resources. We might say that beyond that point would be to tolerate abusive social relations, or social relations in which some citizens took a disrespectful advantage of others. Where this point actually falls in any particular case might be a matter of contention, but although this implication is perhaps vague and unsatisfactory it may be the subject of further research.

Another strategy that DE theory may follow in regard to ensuring people take responsibility for, and carry the costs of, their choices while at the same time guaranteeing the SM of capabilities, is to require that people internalise those costs wherever possible. Thus, for example, while society's obligations 'to provide healthcare is unconditional and cannot be rescinded';⁴⁴⁸ it would nevertheless seem wrong to make prudent non-smokers pay more for universal health insurance because so many fools smoke. DE would therefore require individuals to internalise the costs of irresponsible behaviour *ex ante*, and yet guarantee medical care as and when it is needed. As Anderson notes;

If the costs of some particularly dangerous activity are high, and if the activity is not performed in one's capacity as a participant in the productive system, then justice permits a tax on that activity to cover the extra costs of medical care for those injured by engaging in it. A tax on each pack of cigarettes, adjusted to cover the medical costs

⁴⁴⁸ Anderson, 'What is the Point of Equality?' p329.

of treating smokers, would force smokers to absorb the extra costs of their behaviour.⁴⁴⁹

One further criticism of the SM is that irrespective of the level of responsibility shown by individuals, there will always come a point at which guaranteeing a sufficiency level of functioning to each member of society will become too expensive. Richard Arneson, for example, argues that when misfortune strikes it is simply an unfortunate fact that some people either cannot be sustained at the threshold level no matter what resources are invested, or else only at exorbitant expense to the community.⁴⁵⁰ One such example here is that when individuals get increasingly old and infirm it will no longer be possible to guarantee certain freedoms. Arneson believes that it is inescapable in such situations to do otherwise than make morally sensitive cost – benefit analysis in order to determine whether maintaining an individual at the guaranteed level (or some specified distance from it) is morally worthwhile. The problem for Anderson's account of DE is that it rejects the use of moralising judgements, and for that reason it is inhospitable to such analysis. Nevertheless, the problem may be addressed to some extent by the extension of the principle of universal justification, and the application of that test within particular social contexts. I will examine this further in a section below that discusses healthcare.

⁴⁴⁹ Ibid, p328. This strategy, and the SM of capabilities it supports, is of course subject to the criticism that it is perfectionist about the possible conceptions of the good. Why should smokers not enjoy cheap cigarettes and have less medical care? However, as Anderson argues, this objection fails to appreciate the distinction between what people want and what other people are obligated to give them. The basic duty of citizens acting through the state is not to provide them with what makes them happy but to secure for them the conditions of freedom, and these are facilitated by a set of neutral goods or capabilities that citizens need in order to function as equals over the course of their entire lives.

⁴⁵⁰ Richard J. Arneson, 'Luck Egalitarianism and Prioritarianism,' *Ethics* 110 (2000):339-349.

7.5 DE, capabilities and cultural ageism

In chapter 3 I examined the concept of culture which I characterised as a socially constructed lens through which we perceive ourselves and others. Many of the beliefs and values that we hold are drawn unreflectively from prevailing social norms, and if those norms contain prejudice we may not be readily conscious of that fact. Cultural oppression involves the cultural formation of negative judgements and attitudes about the moral and social worth of others or oneself. These negative attitudes or stereotypes are social constructs that both identify and define the moral and social worth of older persons, which are then internalised by both those that oppress as well as the victims themselves. Such negative cultural stereotypes may be used as reasons to restrict access to healthcare or income distribution to the old and even strip them of their right to vote. Moreover, they may even be assumed to militate against the seriousness of more directly harmful and oppressive forms of discrimination. While racism and sexism involve negative cultural attitudes that oppress individuals over the course of their complete lives, and so violate the diachronic interests of blacks and women, cultural ageism involves negative attitudes towards the old and act against the synchronic interests of older persons. In this respect at least cultural ageism is intrinsically wrong in the same way as either racism or sexism.

A purely distributive theory of equality would not necessarily challenge negative cultural stereotypes, and as Kymlicka points out, it is the mistake of many liberals to believe that cultural oppression could not survive under conditions of economic equality. Indeed, Scheffler has argued that Dworkin's ideal of equality, as it is applied to questions of distribution, is not itself a model of social and political equality and is

in fact compatible with social hierarchy.⁴⁵¹ Moreover, G.A. Cohen notes that if the Dworkinian state failed to treat its citizens with equal respect and concern ‘then no analogous duty falls on individuals. It is not the individual’s duty to treat everyone (relatives, friends, and strangers alike) with equal respect and concern.’⁴⁵² Thus, even if economic justice prevailed there is no obvious reason that negative cultural stereotypes should not do so as well.

In order for society to create a culturally just environment these negative moral judgements and stereotypes should be challenged, and as I argued in chapter 3, this can best be achieved by pursuing an ‘advocacy strategy’. Unlike the neutral state *laissez faire* strategy the advocacy strategy can challenge inegalitarian cultural practices and beliefs publicly and actively and engage in cultural reform, while at the same time not interfering with personal expression in the way the censorship strategy would. The advocacy strategy seeks to persuade rather than coerce individuals, and does so through economic, educational and ideological activities and would provide active financial support for associations and groups striving to combat inegalitarian cultural prejudices like ageism. Groups such as Age Concern.

As DE seeks to equalise social relations between citizens it would certainly challenge the cultural prejudices and stereotypes that constitute cultural ageism. Anderson points out that one advantage of using Sen’s capabilities metric is that it allows us to

⁴⁵¹ Scheffler, ‘What is Egalitarianism?’ p34. Note that Scheffler is careful to point out that Dworkin stands out amongst luck egalitarians in the sense that he does in fact attempt to situate his distributive theory within a broader social and political ideal. See Samuel Scheffler, ‘Equality as the Virtue of Sovereigns: A Reply to Ronald Dworkin,’ *Philosophy and Public Affairs* 31(2003): 199-206, p204.

⁴⁵² G.A. Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* (Cambridge, Mass.: Harvard University Press, 2000), p164. Cohen describes Dworkin’s conception of equality as ‘statocentric’. Scheffler describes it as an ‘administrative conception’ for the same reasons.

analyse injustices in regard to matters other than simply that of the distribution of resources and other divisible goods.⁴⁵³ For example, Anderson notes that,

Feminists work to overcome the internal obstacles of choice – of self-abnegation, lack of confidence and low self-esteem that women often face from internalising norms of femininity. At the same time gays and lesbians seek the ability to publicly reveal their identities without shame or fear which requires significant changes in social relations of contempt and hostility, and the disabled aim to reconfigure public spaces to make them accessible. No mere redistribution of divisible resources can secure the freedom these groups seek.⁴⁵⁴

Very often what is needed to create social equality is the challenging of the social norms that convey the negative cultural judgements that support these forms of oppression, and for this reason DE would embrace the advocacy strategy.

7.6 DE and positive discrimination

One way in which negative social norms and cultural stereotypes can be challenged is by positively discriminating in favour of those people who are normally discriminated against, and positive discrimination in favour of blacks and women is normally justified in this way. Such positive discrimination would be justified by DE as a way of improving the social relations between citizens in the long term, just as it would also be justified as a way of countering negative ageist cultural stereotypes, particularly in the field of employment. However, the efficacy of positive discrimination within the other social contexts addressed by this thesis, of healthcare, income support, and voting rights, is less obvious.

⁴⁵³ Anderson, p320.

⁴⁵⁴ Ibid.

This is not to say that all age discrimination in those other contexts is wrong. But any discrimination, positive or otherwise, would be wrong to the extent that it violated or neglected the fundamental interests of individuals to have their basic needs met and to have access to the social bases of self-respect. These are interests that positive discrimination is motivated to protect and develop in the long term, while cultural ageism, like sexism and racism, undermines these interests.

7.7 Anti-ageist DE in context

Thus far this chapter has argued that DE and the principle that we should equalise social relations provides us with a philosophical position from which both cultural and egalitarian ageism can be challenged. I now return briefly to each of the four social contexts outlined in chapter 1 to examine how DE would defend an anti-ageist position in a practical way.

(i) Healthcare

As noted above, culturally oppressive stereotypes do influence the thinking of those who are involved with decision-making within the allocation of health care. However, the FIA, the QALY, and the CLV each justify the restriction of such resources to the old, which means we can never be certain of the degree to which the discrimination in any situation is motivated by cultural ageism or egalitarian considerations. However, if an advocacy strategy were initiated that debunked negative cultural stereotypes about the moral and social worth of older patients, then it might become easier to determine the influence of the purely egalitarian arguments for ageism.

The principle that we should equalise social relations, and that we should respect the synchronic interests of all persons, whatever their age, would, I suggest, mean DE would support what Dan Brock called the 'conventional view' of healthcare; that access to various treatments should be based upon medical need alone and free at the point of use.⁴⁵⁵ Age, therefore, would not be permitted to influence rationing decisions because everyone has the same fundamental synchronic interests that demand equal protection. Following the concept of comprehensive justification, imagine the CLV, FIA or QALY policy arguments having to phrase the argument for an ageist health policy that denied treatment to an older person in need of it. Such an ageist argument might appeal to the older person using the FIA thus;

You have been lucky enough to have lived a fair innings of life. You ought to now deny yourself further treatment and allow a younger person to receive that treatment so that they too might reach a fair lifespan.

Alternatively, the argument might use the CLV and PA and instead claim;

As an old man you have now used up your complete life share of benefits (as it would have been distributed under ideal conditions by an optimally rational individual behind a partial veil of ignorance), and you therefore have no moral claim to any further healthcare.

If it is true that the 'rest of one's life' is as precious to each person irrespective of their age, as Harris suggests, the ageist policy argument would not be endorsed by all or even most older citizens. Moreover, the ones that did endorse the view may in fact do so as a consequence of their having internalised negative cultural judgements regarding their own moral and social worth.

⁴⁵⁵ Dan Brock, 'Justice, healthcare, and the elderly,' *Philosophy and Public Affairs* 18 (1989):297-312, p299.

The drawback that this commitment to the conventional view presents, however, is that we continue to be faced with a problem of how we are to go about rationing limited resources among unlimited demands, apart from the internalising policies noted above that require people to carry the costs of irresponsible behaviour *ex ante*. The DE and the anti-ageist ethic are unhelpful if we imagine that a choice must be made between two people as to which receives a heart and lung transplant that only one can have. We can imagine two persons, person A who is a healthy 75 year old that has always taken care with his health but who is unlucky enough to have a congenital heart weakness, and person B who is a 55 year old heavy smoker. The FIA would choose person B simply because he is the younger, but as we have seen, one of the criticisms levelled at this view is that it takes no account of the level of responsibility a person has shown for his health. The CLV and PA combined would also choose person B if it would seem likely, as Dworkin and Daniels claim, that few people would save money for organ transplants in their old age.

However, DE would not be able to decide between them. The first desideratum for egalitarian principles that Anderson outlines requires that certain goods, among them medical care, must be guaranteed to citizens *over the course of their entire lives*. This means that we could not discriminate against the older patient in this context and that it would be wrong to simply choose not to give the transplant to person A. However, this does not mean we could choose person B either. The reason for that is that although the second desideratum requires upholding the responsibility of individuals for their own lives, it also requires that this be done without passing demeaning and intrusive judgements on the level of responsibility they have displayed. This seems to rule out the possibility of refusing to treat the smoker on the grounds that he is

responsible for his own ill-health. Indeed, we have already seen that the costs of irresponsible behaviour like smoking are to be borne *ex ante* by those who engage in it, and that ‘the obligation to provide healthcare is unconditional and cannot be rescinded.’

Thus, quite apart from the force of the anti-ageist ethic, DE itself would not be able to decide upon which person to treat. Nevertheless, the problem of how we are to ration a good is separate from the argument presented within this thesis, which is that distribution should not be rationed simply on the basis of age and that this ethical principle would be defended as part of DE. And in this much my argument would seem to be vindicated by the discussion above. However, rationing need not take a person’s age into consideration, and one alternative way this might be achieved is through the use of a lottery.

(ii) Income support

The CLV is an essential feature of any egalitarian theory of diachronic distribution, and it has been my claim in this thesis that it would permit significant restrictions of benefits to the old in order to ensure lifetime equality between persons. It has been the concern of groups like Americans for Generational Equity (AGE) that the current old age group are not just enjoying greater benefits than all the previous old cohorts, or simply that they are benefiting at the expense of the current young and middle-aged, but that they are enjoying greater benefits at the expense of the next generation of the old who will be worse off. From the perspective of the CLV some restrictions on these benefits is morally required. In chapter 6 (section 3.iv) we noted that the PAYG

synchronic system of income support in old age has been blamed for this perceived intergenerational injustice. For those concerned with diachronic equality the answer may lie in either one of two possible diachronic support systems, one that might be established on an age cohort basis, and another on an individual basis.

However, the principle that we should equalise social relations is more likely to support the PAYG system rather than either diachronic system because the latter would justify ageist social policies. For example, if we take the diachronic cohort system we can imagine two age cohorts, one 20 years older than the other, and each accumulating separate stocks of assets in preparation for old age, and imagine further that cohort A has been unlucky enough to have lived through very low levels of economic growth which are then reversed as A reaches retirement. The members of that cohort may suffer destitution as a result of bad luck, but as far as the diachronic cohort system was concerned, even though the younger age group B might now be quite well off it would have no obligation to provide support to the older age group. The position at T4, however, would represent grossly unequal social relations between contemporaneous citizens, a situation that DE could not countenance.

	T1	T2	T3	T4
Age group A	10	10	10	5
Age group B	-	10	10	50

For social relations to be equal would require different age groups to share the benefits and burdens that result from either advantageous or disadvantageous

economic conditions within the lives of contemporaneous citizens. Rather than the 'approximate equality' of benefit ratios that Daniels defends, DE would understand equity between age groups as a rough equality of welfare benefits, in the sense that they would be relative to the current income of workers.⁴⁵⁶ Such an understanding would violate the CLV because the contributions and benefits that each individual enjoyed might differ widely, and this could be construed by distributive egalitarians as unfair. Nevertheless, in line with the argument proposed by Wolff, such unfairness would be justified within a broad egalitarian ethos in the pursuit of the social conditions that respect all citizens, and in which the social bases of self-respect are guaranteed.

In addition to this anti-ageist proposition, however, DE also provides us with a way of challenging the current old age group if it is indeed true that its members are receiving too much as a consequence of their political power. Rather than claiming such a situation as wrong on the grounds that each person is not getting her fair and equal share of diachronic benefits, DE would view the situation as unjust on the purely synchronic grounds that relations between citizens were unequal. On these synchronic grounds age discrimination against the young would be as extrinsically morally wrong as any discrimination against the old. Thus, we can acknowledge the problem and rephrase it in a way that gives us a reason to seek to correct the imbalance without the need to appeal to the CLV or the FIA.

⁴⁵⁶ This would of course mean higher contributions would be required from workers during periods when the retiree-worker ratio was unfavourable.

(iii) Voting rights

This is obviously a problem closely linked to the intergenerational equity debate is the fact that the median age of the electorate is increasing in all industrialised societies, and because older voters tend to be more active there is a fear expressed by some that members of that age group may use their increasing electoral strength to further their own short-term self-interest at the expense of the young. As we have seen the proposed solutions to this perceived problem include disenfranchising the elderly. This, of course, would not be countenanced by the principle of ESR. DE is democratic not just in the sense that it requires people to have equal voting rights, it also requires people to be equal in a social sense that each person accepts the obligation to justify their actions in terms that are acceptable to others. This, in essence, is Cohen's principle of comprehensive justification outlined above. It would be difficult to phrase a proposition to older people that they should be deprived of the vote on the grounds that they are likely to misuse it. Such a proposition would effectively strip the elderly of citizenship (in a similar way as criminals), and consequently is unlikely to be endorsed. Moreover, the disenfranchisement of members of one age group would mean that a synchronic inequality of social relations existed between the young and old. The young would have a vote while the old would not and that would be a serious imbalance of power.

However, if a demographic trend did increase the power of the old over the young in the way that has been suggested, then certain arrangements may be necessary to correct this. A reduction of the voting age to 16 or 14, and proxy votes for parents of

younger children would be compatible with DE because, if anything, they make the social relations between young and old more equal.

(iv) Employment

We noted in chapter one that, although ageism within the workplace is currently widespread, the government has recently made what has been called ‘the business case for age diversity’; that ageism is bad for business. With the recent demographic trends that are bringing about a high ratio of retirees to workers there are good financial reasons for the government to be concerned that people stay in work until much later in their lives than past cohorts. Moreover, the same demographic trends mean there are now fewer younger workers available in the labour market to fill ever increasing vacancies, and this means that firms themselves have an incentive to hire and retain older workers even if that means retraining them when they are already in their fifties. This is of course a contingent argument against ageism in the workplace, and as I noted in chapter 1, utilitarian reasons of contingency and efficiency can argue either for or against ageism.⁴⁵⁷

However, DE seeks to provide an ethical reason for challenging ageism in the workplace, which it does by requiring social relations to be equal. It may be the case that cultural ageism is more prominent within employment than egalitarian arguments, and an advocacy strategy may be effective in challenging some of the negative cultural stereotypes that depict older workers as slower to learn, less flexible, and out of date.

⁴⁵⁷ We found in chapter 5 that Daniels, a liberal egalitarian, also provides just such a contingency argument for older workers to remain in employment.

7.8 Concluding remarks

In conclusion to this chapter I would argue that the DE principle that social relations between citizens should be as far as possible equal means that it is an inherently non-ageist egalitarian theory that would at the same time actively challenge cultural ageism. DE is non-ageist in the sense that it is a socially egalitarian theory that incorporates an inherent synchronic concern for the well-being of individuals. It can therefore incorporate the anti-ageist principle that the fundamental synchronic interests of older persons have a moral weight that is equal to that of younger persons. Nevertheless, DE is also committed to the diachronic value of personal responsibility that ensures the moral plausibility of many contemporary distributive egalitarian theories. DE therefore requires citizens to be personally responsible for the success of their own lives, and leaves room for the incentives necessary to encourage productivity but, unlike LE, it does not countenance the destitution of any of its citizens at any time in their lives. DE therefore gives expression to the two irreducible sets of interests that people have.

Because DE seeks to actively challenge the cultural oppression that creates unequal social relations it would be entirely compatible with an advocacy strategy against negative cultural stereotypes. Moreover, just as Rawls argues that within his theory 'the principles of justice are prior to considerations of efficiency',⁴⁵⁸ so for DE the principle of ESR would constrain the degree to which considerations of efficiency might justify age discrimination. If democratic egalitarians require society to ensure that the social relations between citizens are equal then any demands for a more

⁴⁵⁸ John Rawls, *A Theory of Justice*, Revised Edition (Oxford: Oxford University Press, 1971, 1999), p60.

efficient use of public goods, such as healthcare, would be constrained by that principle.

In line with this thinking we can say that DE would not condone any form of age discrimination that was either motivated by negative judgements concerning the moral or social worth of older people, or which permitted older individuals to fall into a situation in which either their relations with others involved subordination, or in which their fundamental synchronic interests were not respected. That is to say, circumstances in which their basic needs were not met, where they were constrained from acting and thinking autonomously, or where they could not be expected to enjoy adequate self-respect. The only situation in which discrimination against any age group would be condoned on these terms would be a situation in which that discrimination benefited the synchronic interests of all citizens, and this has been shown to result from the provision of flu vaccines to older people. For these reasons those who advocate non-ageist policies should be democratic egalitarians.

Conclusion to thesis.

The aim of this thesis has been twofold. Firstly, the thesis has overcome the vagueness of the concept of 'ageism' that gives rise to the diametrically opposed views concerning whether or not it is just, and it has done this by examining exactly what this concept involves. The thesis has discussed two very different forms of ageism or wrongful age-discrimination: cultural ageism and egalitarian ageism. The former is intrinsically wrong because it is motivated by negative judgements concerning the moral and social worth of older people. The latter, on the other hand, does not involve moral bias, and so it is intrinsically benign, but is nevertheless extrinsically wrong to the extent that its consequences harm the synchronic interests of older individuals.

The second aim of the thesis has been to develop an anti-ageist ethical principle capable of comprehensively challenging both forms of ageism and which is at the same time consistent with liberal egalitarian political theory. The thesis has integrated the anti-ageist principle, that the synchronic interests of all persons including the old are of equal moral value, with a democratic social egalitarianism that seeks to equalise the social relations between citizens. The thesis has then contrasted this social equality with mainstream egalitarian theories that are concerned primarily with economic distribution. In this way the thesis has connected the debate about the morality or otherwise of age discrimination with an ongoing debate within contemporary liberal philosophy. The discussion of these two forms of egalitarianism has shown that DE is inherently non-ageist, from which we can conclude that anti-ageists should at the same time be democratic egalitarians.

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