

INTRODUCTION

The Welfare State, born after the Second World War in industrialized countries, is undergoing a deep transformation, justified by its poor performance as a competitive economic actor.¹ This transformation is particularly characterized by the complete structural redesign of state-run Pay-As-You-Go (PAYG) pension schemes, which were founded on social cooperation, redistribution, protection from free-market and natural life-span contingencies, and the moral relevance of some of the least advantaged members of society. Unfortunately, due to demographic, fertility and economic changes that have reconfigured societies, pension programs have been highly criticized² for the financial burden they represent for the state and for younger generations. One of the most popular solutions, supported by international financial institutions including the World Bank and the International Monetary Fund, is the privatization of pension programs, commonly known as Individual Accounts (IA).

The basic design of such a private scheme is meant to respond primarily to the financial urgencies created by the previous pension system, and to the current mobilization of states towards free-market based programs. To address these financial considerations, the new program, in many states like Mexico, is structured as an individualized system that cancels the redistributive scheme and eliminates collective cooperation between generations. This avoids economic burdens placed on the state and on younger and less numerous generations, and allows individuals to control their assets and the manner in which to manage them. Without a redistributive scheme and collective cooperation, pension privatization shifts its

¹ Neil Gilbert, *Transformation of the Welfare State: The Silent Surrender of Public Responsibility* (Oxford: Oxford University Press, 2004), 10.

² See George Rejda, *Social Insurance and Economic Security* (New Jersey: Prentice Hall, 1991). Guy Peters, *Political Economy in Western Democracies* (New York: Holmes and Meier, 1985). José Piñera, "The Titanic Crisis of America's Social Security System," *Goldwater Institute* (March 12, 2003 [cited April 21, 2009]): available at www.goldwaterinstitute.org/article.php/255.html

Dan Crippen, "Congressional Budget Office Testimony: Statement of Dan L. Crippen, Director," *United States Senate* (2001 [cited April 21, 2009]): available at www.cbo.gov/showdoc.cfm?index=3214&sequence=0

focus from the collective to the individual; and is therefore characterized as a program that entails responsibility of the individual to herself and nobody else; also relieving the state from its obligations towards these individuals.

These fundamental characteristics of IA have a strong similarity to the precepts advanced by Nozickean libertarianism.³ The theory of Robert Nozick is one that argues for extensive liberty of self-ownership, identifying collective responsibilities and redistributive policies as a limit on *personal liberty* to decide over one's assets, work and talents; that is, over one's self.⁴ Nozick argues that the state should not implement policies further than those of physical protection (judges and police force) and laws that allow the 'natural' development of the free-market; anything more would necessarily threaten individual rights.⁵

The problematic that derives from Nozick's theory, to which this thesis responds, refers to those who are limited by their economic or natural disadvantages. If redistributive policies are banned as a limitation over personal liberty, then collective responsibility towards the least advantaged is not a requirement in a Nozickean society. It follows that Nozick does not award moral relevancy to many of the least advantaged members of society who do not necessarily have this extensive liberty, due to their economic or natural limitations. Therefore, Nozickean libertarianism as a guideline for social policy is detrimental for society, particularly for those who can be considered least advantaged; since the theory's basic right of personal liberty to choose is selective and not universal, as it is only awarded to those who have the ability to afford it, and therefore permits certain levels of "slavery." Nozick's theory has the purpose to dismiss chattel slavery however, it fails to confront the kind of slavery derived from the natural or social limitations of some to pursue their life plans. This problem

³ Norman Daniels, *Am I My Parents' Keeper? An Essay on Justice Between the Young and the Old* (Oxford: Oxford University Press, 1988), 37.

⁴ Robert Nozick, *Anarchy, State and Utopia* (United States of America: Basic Books Inc.,1974), 167.

⁵ Nozick, *Anarchy, State and Utopia*, 149.

of Nozick's theory pertains to the situation of the elderly, in the case of pension privatization; where its attention is focused on single individuals, disregarding that there might be individuals who are unable to finance, for themselves, a basic pension. Due to his strong stance against redistributive policies, Nozick does not devote much attention in his theory to this undesirable result.

Therefore, the objective of the present thesis is to introduce a level of analysis that draws from an alternative, and equally famous, guideline for social policy: Rawls' theory of social justice. In doing so, I hope to award a concise analysis of pension privatization from a perspective that is neither financial nor economic, but that underlines the importance of social justice, and that does not disregard the problematic situation of some, in policies that are mainly directed to protect *all* members of society from external contingencies. Rawlsian justice is particularly relevant for this analysis because it is a theory that acknowledges the importance of individuality, as does Nozick, but without disregarding the importance of the collective and the moral relevance of the least advantaged members of society.

In *A Theory of Justice*, John Rawls established an understanding of social justice as "justice as fairness,"⁶ that entails primarily the recognition of individuality, through the acknowledgment of the inherent difference between members of society. This recognition, in the theory, would succeed by awarding equal moral and political importance to *all* individuals, by establishing the equal right to a *fair* share of society's resources. This would give individuals a *fair* opportunity to realize their own unique life plans. To follow through this important objective, Rawls designed two principles of justice, in lexicographic order, for social institutions. The first entailed an equal set of liberties for all.⁷ The second referred to a redistribution of social and economic inequalities in such a manner that benefited the least

⁶ John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971), 12.

⁷ Rawls, *A Theory of Justice*, 302.

advantaged members of society.⁸ The originality of these two principles is that they do not advocate pure equality or utilitarianism. They are designed so that inequality is permitted, and therefore the very talented and economically wealthy can pursue their conceptions of the good, by benefiting the least advantaged and *their* conceptions of the good, at the same time.

If the elderly can be characterized as a part of the least advantaged members of society, then it will become evident that pension privatization is a detrimental program that inherently disregards social justice as a critical foundation, and leaves the least advantaged in a position of risk and uncertainty. As Rawlsian social justice is a theory that is meant to decrease the negative effects of being part of the least advantaged, without disregarding the importance of the rest of society, and therefore is an inclusive theory, it is a much more adequate philosophical guideline to design or reform social policy. Several authors have used Rawlsian principles to argue for certain social policies, such as Norman Daniels and his case for healthcare,⁹ and Tony Fitzpatrick and his theory of Sustainable Justice for environmental purposes. Furthermore, Rawls has also made an important contribution to the area of International Relations with his book *The Law of the Peoples*.¹⁰ These examples clearly reflect the importance of the contribution of John Rawls and his theory.

However, Rawlsian social justice is not without its problems. The particular problematic, at this point and for this particular analysis, is identified by the lack of specificity of Rawls when defining the “least advantaged” members of society. Rawls asserted that an adequate index of social (i.e. wealth) and natural (i.e. health) primary goods

⁸ Rawls, *A Theory of Justice*, 302.

⁹ See Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (New York: Cambridge University Press, 1996). Tony Fitzpatrick, “Making Welfare for Future Generations,” *Social Policy and Administration* 35, no. 5 (December 2001).

¹⁰ See John Rawls, *The Law of the Peoples: With the Idea of Public Reason Revisited* (Cambridge, Massachusetts: Harvard University Press, 2001).

might determine who the “least advantaged” members of society are.¹¹ It follows then that it is possible to identify a “least advantaged,” or “most unfortunate” individual by the amount of natural endowments she has. Furthermore, Rawls only focused his theory on a determinate position in a life-cycle, the “starting place,”¹² which refers to the position of individuals at the moment of birth. Therefore, the identification of the least advantaged will be conducted during their first years of life, determining the amount of natural primary goods they were born with. My long-standing worry here is that this leaves aside the fact that natural endowments do not stay permanent over time, they tend to decrease when old age arrives. This is something that his theory does *not* take sufficiently into account.

One particular problem stemming from this will be the focus of this thesis and concerns the consequences of presupposing that initial distributions (particularly of natural endowments) stay permanent over time for redistribution as a means to achieve social justice. If the natural fact of ageing is not introduced into the theory, I claim this will render Rawlsian redistributive efforts insufficient and unjust. This lack of specificity becomes more problematic, as it does not award moral relevance to the elderly as a least advantaged group, leaving an open door for Nozickean supporters to influence social policy, and implement policies that leave members of society in a position of risk.

However, drawing from the ideas of scholars including Norman Daniels and Dennis McKerlie, I show that it is possible to widen Rawls’ definition of the least advantaged, including the elderly as a part of this group, and therefore awarding them moral relevance for redistributive purposes. The newly specified definition of the least advantaged will have an important impact when analyzing pension reform and its inherent problematic, which might not be so evident without this Rawlsian perspective.

¹¹ John Rawls, “A Kantian Conception of Equality,” *The Independent, A Journal of Ideas from Princeton* ([cited 20 September 2007]): available from <http://princetonindependent.com/issue01.03/item10c.html>

¹² Rawls, *A Theory of Justice*, 96.

Current Roads: Towards the Material World

As was mentioned earlier, the Welfare State is undergoing a transformation that does not necessarily lead towards more socially just policies. Gilbert announced the arrival of the *Enabling State*,¹³ and Esping-Andersen argued the Welfare State is going through a “new regime shift”¹⁴ particularly in the case of the United States. Behind recent policy reforms in the North American region, such as is the case of pension privatization in Mexico, lies a shift of paradigm that ranges from social justice to extensive individualism promoted by the state. And that necessarily entails a construction of a *new social contract*.¹⁵ One in which, social justice appears not to be the primary concern of states.

It can be quite alarming to understand the new concept of justice as one governed only by market forces, where “social needs should be met on the basis of merit, work performance and productivity.”¹⁶ Unfortunately, free-market based policies do not regard needs as a substantial justification to include redistributive measures into social policy. Social justice, therefore cannot succumb to the full extent of the free-market, as Rawls carefully argues when he describes the institutions necessary for redistribution.

The social minimum is the responsibility of the transfer branch...The essential idea is that the workings of this branch take needs into account and assign them an appropriate weight with respect to other claims. A competitive price system gives no consideration to needs and therefore it cannot be the sole device of distribution.¹⁷

However, the transformation of the Welfare State, in the United States, is not particularly gearing towards Rawlsian considerations of social justice. IA as well as other future reforms based on economic efficiency, tends to be exclusive and not inclusive. Gilbert therefore asks, what happens with the “needs of people who for whatever reasons are not able

¹³ Gilbert, *Transformation of the Welfare State*, 4.

¹⁴ Gosta Esping-Andersen, ed., *Why We Need a New Welfare State* (Oxford: Oxford University Press, 2002), 2.

¹⁵ John Myles, “A New Social Contract for the Elderly?” in *Why We Need a New Welfare State*, ed. Gosta Esping-Andersen (Oxford: Oxford University Press, 2002), 133.

¹⁶ Richard Titmuss, *Social Policy* (London: George Allen & Unwin, 1974), 31.

¹⁷ Rawls, *A Theory of Justice*, 276.

to work in the market economy - a group that has been ignored in the rush to embrace market reforms.”¹⁸ This question brings back the issue of the least advantaged: who is it that cannot work (in normal circumstances where accidents or birth-born disabilities are not present)? One part of society that comes to mind is the elderly. The elderly have to a large extent lost their natural endowments and are now (possibly) incapacitated to work in the market economy. So, how is their collective destiny determined? And by whom?

In the case of the three countries that conform the North American region, the answer to this question was generally answered by state-run PAYG pension programs that awarded the elderly moral relevance. However, these programs are being questioned on two main fronts. The first regards pension programs to be financially unstable and therefore detrimental for national economies. The second justifies its criticism on the basis of the intergenerational contract of state-run pension schemes. PAYG requires younger generations to pay for the pension of the elderly, under the understanding that when this younger generation reaches old age, the young generation of that time will pay for them. However, demographic changes have turned this structure into a heavy burden for the young, who now represent a lesser portion in demographic pyramids in comparison with the elderly. Debates revolving around intergenerational justice are now questioning the fairness of PAYG. Yet however important these debates are, their theoretical foundations are uncertain, and can be biased towards the young, without awarding the elderly the moral relevancy they deserve. Without a proper understanding of justice, intergenerational justice debates can eventually support the privatization of pensions, as a means to relieve the burdens of younger generations of voters.

These debates have an important impact in countries like the United States, where the decision to privatize their Social Security structure has not been made yet. During the administrations of George W. Bush, a pension privatization bill was introduced in Congress,

¹⁸ Gilbert, *Transformation of the Welfare State*, 190.

but was never accepted.¹⁹ Currently, with the new president Barack Obama, decisions about Social Security continue to be discussed, therefore there is an inherent importance to define matters of social justice not only on considerations of the free-market.

Market-oriented policies do not consider the needs that the old age population has. They therefore limit pension reforms to economic viability of the country's economic system, and often conveniently forget people's needs and therefore, social justice. Under these circumstances, a theory of justice that integrates current demographic problems is sorely needed to reassess policy reforms. Countries like the United States are at a crossroads. They might continue on the current market-oriented paths where the Welfare State, including the pensions system will surrender to the market economy, setting aside redistribution and intergenerational issues, which are matters of justice. Or they can consider social justice principles that might constitute the basis for a better consideration of old age policies, which not only take the welfare of old age into account, but will also promote social cooperation and limit radical individualism.

Considering all of the above, the central objective of this thesis is to stress the need for a reconfiguration of John Rawls' second principle of justice. This principle is an adequate beginning to construct a new social contract. However, I argue that Rawls' difference principle excludes positions that are fundamental to the design of comprehensive social policy. I mainly identify one problem: the principle does not include the old age population as part of the least advantaged. It is therefore crucial to adjust the difference principle, to provide an adequate principle on the basis of which, social policy can be designed. Hence the central hypothesis of this dissertation is that *specifying with more precision the concept of the least advantaged in Rawls' difference principle, provides a more comprehensive principle that can*

¹⁹ Greg Arnig Jr., "The Best and Worst in Social Security, 2005," *The Social Security Network* (2006 [cited 14 February 2007]): available from <http://www.socsec.org/commentary.asp?opedid=1170>

allow the design of more just social policy in pension reforms. I advance two sub hypotheses. The first is that the second principle has to include old age population as part of a more precise specification of the least advantaged. The second sub hypothesis is that this exposes pension privatization as an inherently unjust program, but it will set the basis for the design of a future one in the United States.

Methodology, Structure, and Content

I use two methods to reach the objectives of this thesis. The first is mainly theoretical and focuses on John Rawls' theory of justice. Given that his theory is very broad and multi-faceted, I center primarily on the second principle of justice where the postulates of *redistribution* and *least advantaged* are presented. However, it is first important to determine just why Rawls' theory is such a relevant central source for this particular analysis. To do this I elaborate a theoretical debate exhibiting the opposing arguments of Robert Nozick, whose primary premises are the foundation of pension privatization. This will permit me to establish that Nozick's arguments, however meaningful, center on purely libertarian assumptions of rights which are debatable and tend to be exclusive for those who have the ability to afford them. The presentation of Nozick's arguments will also permit me to identify his conceptual limitations, which undeniably render the theory unsuitable as a guideline for social policy.

The adequacy of Rawls' theory in comparison with Nozick's does not, however, exempt it from certain difficulties. I identify a critical problem with the second principle of justice. The problem of specification will be evident when considering the arguments of Norman Daniels, Gosta Esping-Andersen, Michael Engelmann and Summer Johnson who besides other assertions, have a profound understanding of old age issues, and stress in various ways the need to have a deeper consideration of this age group. After sufficient attention has been paid to these authors, it will be fairly obvious that Rawls lacks the appropriate precision when describing the *least advantaged* group, since old age population is

not widely considered within his theory. I attempt to add, at least with respect to the elderly, the appropriate specificity to Rawls' second principle of justice.

My additional specification of the *least advantaged* will, I hope, allow me to provide insight into ongoing intergenerational justice debates, on two main fronts: justice between birth cohorts and between age-groups. I use this to revise the claims made by important scholars including Norman Daniels,²⁰ Erik Schokkaert and Phillippe Van Parijs.²¹ After a concise analysis of these claims, particularly of Daniels' theory, and with the adjusted Rawlsian principle of justice, it becomes evident that debates of intergenerational justice have been biased towards the young. Yet, after introducing the elderly as a morally relevant group, and with the assertions of scholars such as Schokkaert, Van Parijs and McKerlie, I assert that Rawls' *redistribution* postulate is fundamental to promote social justice within the framework of intergenerational justice. The defense of the redistribution maxim will be based on the arguments of Rawls, Neil Gilbert, Stephen Holmes and Cass R. Sunstein.

It is important to note that it is fairly difficult for any theory of justice to include all possible social issues, especially since new issues tend to emerge as time passes. Therefore, the adaptations to Rawls' theory I offer here do not cover all age groups or all social issues in need of redistribution. I focus only on old age and productive life. There are, of course, several other positions other than these two within a lifespan cycle, and also there are other situations such as inadvertent illnesses, accidents, or other contingencies that might leave the well endowed in a disadvantaged position. These situations are important for a theory of justice, especially if it is going to be some kind of parameter for policy makers and they are prime areas for future research projects. However, it is not possible to address all groups within the least advantaged in this dissertation.

²⁰ Daniels, *Am I My Parents Keeper?* 11.

²¹ See Erik Schokkaert and Phillippe Van Parijs, "Pensions Policies for a Just Europe: Individual versus Collective Responsibilities," *Journal of European Social Policy* 13, no. 3 (2003).

The weakness I just mentioned might seem a serious limitation for the present research, but it is also the source of its greatest strength and the most important contribution of this thesis. It will be evident as I develop this thesis, that the life-span cycle permits the broadening of the second principle of justice towards various positions that are not discussed in this thesis. This dissertation should therefore be seen as a small but important beginning that can and should encourage further studies in the future. After taking Norman Daniels' idea of a lifespan approach, it becomes evident that these modifications to the theory could also apply to, for example, children's lives and other positions resulting from certain life contingencies. Policy makers will have at hand a principle that can be considered comprehensive. It is necessary to point out that the use of the principle, after the modifications have been made, should be always with the objective of promoting social justice, and not as a promoter of particular interests within certain decision makers. I consider this, since the principle can be subject to modifications that are unnecessary and that include positions that cannot be considerably justified as being "least advantaged."

To see clearly and pragmatically the fundamental reasons for the improvement of the second principle of justice, I advance a second methodological approach which is normative in nature. I now return to the construction of the new social contract. To show that this construction is currently under way, and that it is being directed poorly, I use a current wave of pension privatizations as an example to show that, in fact, the transformation of the Welfare State is leading to the design of social policy based on market oriented interests.²² The concrete illustration of this is that in North America, pension privatization has been amply discussed. It was implemented in Mexico, Canada decided against it, and the United States continues to debate the possibility of implementing pension privatization, where individual responsibility takes over for collective responsibility. The modifications suggested

²² See Gilbert, *Transformation of the Welfare State*, 4.

here for the second principle of justice should be of some assistance in assessing and evaluating this kind of reform, providing a better framework that includes the adjusted postulates of *least advantaged* and *redistribution* as a basis for the further design of fair and functioning social policy in North America.

To comply with the methodology the structure and content of the chapters will be as follows. In chapter one, I provide an evaluation of Rawls' theory concentrating mainly on the philosophical roots that led to the second principle of justice. This will allow me to compare them to Nozickean libertarianism. The two theories do not distance themselves greatly, their philosophical groundwork is similar. However, the difference that separates the two theories is found in the manner in which both authors consider it adequate to acknowledge individuality. Whereas Rawls looks for a way to recognize individuality by awarding equal moral and political relevance to all individuals, Nozick is limited by his conception of self-ownership, which only refers to the liberty of owning the "fruits of labor."²³ Hence this conception does not give relevance to the fulfillment of personal life-plans, and therefore leaves aside 'self-determination.' This theoretical debate will underline the adequacy of Rawlsian theory for social policy, without disregarding its imperfections which lie in issues different from those identified by Nozick.

In the second chapter I stress the problems that the second principle of justice has and the need to correct them by analyzing the definition of least advantaged within the Difference Principle. The defining features of this population group will be contrasted with other characteristics that are not literally included in Rawls' theory to identify the problem of specification. After old age is awarded moral relevancy within Rawlsian theory, I then present the intergenerational justice debate and its bias. However, after a concise definition of justice

²³ Mark A. Michael, "Redistributive Taxation, Self-Ownership and the Fruit of Labor," *Journal of Applied Philosophy* 14, no. 2 (1997): 137.

is introduced into the debate, as well the Rawlsian definition of the least advantaged; the intergenerational justice debate will have a clear theoretical groundwork that will not allow and unjustified bias towards any age group.

The application of these two first chapters will be demonstrated in chapter three which stresses the ongoing construction of a new social contract based on market oriented policies, such as pension privatization. I evaluate the general pillars of IA from the standpoint of Rawlsian justice. This will help me to argue that pension privatization does not include social justice considerations, and that it is a program that promotes market oriented policies and radical individualism, which are detrimental for society. Furthermore, the negative effects of IA and the elimination of social justice pillars will not only be evident in the future of society, but also in its economic well-being, which leads to the fourth chapter.

Pension privatization is not only a possibility; it is a reality in North America, particularly in Mexico. The last chapter will present the case of Mexico and the circumstances that led to the implementation of IA. Pension privatization was adopted in Mexico due to many economic and financial externalities. The disregard of social justice in Mexico becomes clear when the projections of the program are presented. The Mexican case, therefore, provides important lessons for the United States, who is currently debating the future of Social Security.

I conclude that there is a considerable need to have a principle of justice that includes the two main postulates presented in Rawls' second principle of justice. Due to the slow transformation and emergence of new social issues, the principle has to be adjusted to fit the design of social policy. A case that can exemplify this is the pension privatization wave, which is now being implemented without considerations of social justice. The newly modified second principle of justice will permit the United States and other countries to reevaluate the conception of such market oriented policies.