

CHAPTER II REFINING THE SECOND PRINCIPLE OF JUSTICE

“By the way in which a society behaves toward its old people
it uncovers the naked, and often fully hidden,
truth about its real principles and aims.”¹

After more than thirty years since the publication of *A Theory of Justice*, a huge amount of criticism and interpretations have revealed the main contributions of the theory as well as its shortcomings. Fortunately, it is important to note that the suggested shortcomings of Rawlsian liberalism have not outdated the theory: it continues to contribute considerably to many fields of study and it can and has been a theoretical foundation for public policy conflicts that have arisen currently. In particular, Rawls' second principle of justice and his idea about redistributive institutions can be used as a theoretical foundation upon which to assess public policy, such as public pension schemes, which are of special interest to this dissertation.

Even though public pension schemes as well as other social programs may seem too specific for Rawlsian analysis, they are not. They are programs directed to help and aid the least advantaged part of the population. It will be remembered from earlier sections that the “least advantaged” are the fundamental level of analysis of Rawlsian justice, whereby the redistribution of social and economic inequalities has to be arranged so to benefit this particular group.² Regarding the case of pension programs however, in *A Theory of Justice* it is not obviously clear that the elderly are actually considered as part of this disadvantaged group. Therefore, to analyze pension schemes in further chapters with a Rawlsian perspective, it is first necessary to determine the position of old age within Rawlsian justice. A main objective of this chapter is to show that the elderly constitute part of the morally relevant group that Rawls identifies as the *least advantaged*. This moral relevancy targets the elderly

¹ Simone de Beauvoir, *The Coming of Age* (New York: Norton, 1996), 87.

² John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971), 302.

as a group subject to redistributive efforts from society and institutions. The result is that the elderly, as part of the least advantaged, are actually part of a principle of justice: their importance or moral relevancy cannot be left as a mere intimation or an intuition. This of course, has critical implications in several debates about old age, in particular in the intergenerational justice debate, where the moral relevancy of the elderly is, at best, blurry.

To achieve identify the elderly as a part of the least advantaged, one must first examine the relationship between Rawls' conception of the most unfortunate and his understanding of primary goods. Rawls used primary goods, arranged in an unknown index, to determine who was part of the least advantaged and who was not. This indicates a necessary correlation between primary goods and the disadvantaged. Yet my claim here is that Rawls fails to apply his own stipulated correlation when he defines the most unfortunate part of the population. Although the list of primary goods does not only imply economic goods, Rawls settles the matter of the least advantaged on purely economic terms. This, in part, is due to the fact that he was convinced that to go into too much detail would derail his theory of justice. But his Difference Principle requires specificity he did not give.

Even though Rawls did reanimate the discussion and importance of the most unfortunate population in general terms, I think he oversimplified the matter in particular terms and did not provide an in depth look and debate on the particularities of this group. The consequences were an inadequate and generalized definition of the "least advantaged." However, I will show that even though Rawls failed to provide the specifics on the least advantaged, he did establish in the theory and in his explanation of primary goods, the critical features to make a very proximate determination of who are we going to consider the least advantaged? It is just necessary to connect properly the discussion of the least advantaged with that of primary goods.

During the reconnection of conceptions, it will become evident that Rawls included natural endowments as a fundamental element that should be a part of the index that defines the most unfortunate.³ This eventually gave more strength to his argument in *A Theory of Justice*, where to allow the natural lottery to determine the distribution of goods and opportunities would be unfair and morally arbitrary.⁴ Individuals that are born with lesser or different natural endowments cannot be blamed for this, and therefore cannot be held accountable by redistributive institutions limiting their opportunities, by not redistributing to them as part of the least advantaged, “[t]hus we are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return.”⁵ The analysis of this very conclusive quote results in the understanding that natural endowments are critical to identify the least advantaged. However, it needs to be pointed out that natural assets do not stay permanent over time, therefore the least or most advantaged positions might change as time progresses. Unfortunately, Rawls did not address this problem. When referring to individuals in his theory, he appears to take ‘snapshots’ of his members of society in a stage of their life cycle, assuming that natural endowments stay permanent over time or, better yet, freezing at a certain point. Yet the fact that underpins my argument in this chapter is that individuals are not frozen in time, they have full life cycles, where they are born with certain natural talents, they develop these assets, and when old age arrives talents tend to decrease. If decreased natural endowments are a feature of the least advantaged, then the elderly should most certainly be characterized as being part of this group.

³ 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>

⁴ Rawls, *A Theory of Justice*, 74.

⁵ Rawls, *A Theory of Justice*, 102.

If it is correct to consider old age as being part of the least advantaged, the status of their relevancy increases considerably, and it becomes evident that the second principle of justice should also work for the benefit of the elderly. I show this will have critical implications in the intergenerational justice debate where the moral relevancy of the elderly is too loose, and can shift to other age groups, leaving the elderly in a very vulnerable situation. However, after the Rawlsian approach is taken into consideration, the importance of old age will be set as a principle that will not allow the design of policies that deliberately take away the relevancy of the elderly, and therefore decrease their benefits.

Primary Goods: Health, Wealth and Happiness

As we have already seen, the objective of Rawls' difference principle is to arrange social and economic inequalities so that they are "to the greatest benefit of the least advantaged."⁶ This part of the principle gives a critical role to those members of the population that can be considered, in Rawls' view, the *least advantaged*. It is therefore very important to know specifically who these members of the population are. If social policy is to accommodate Rawls' principle, then it is paramount that the answer to this question is revealed. It is here that the problem(s) begin. Rawls did not commit his theory to a single definition of the least advantaged, therefore leaving it a bit to interpretation. Yet he did state that, arranged in an adequate index, primary goods would serve as the basis for interpersonal comparisons that would deliver the proper identification of the least advantaged members of society.⁷ It follows that a necessary correlation exists between the definition of the less fortunate and primary goods, which undeniably awards primary goods an important role in the theory. An inadequate account of these goods would lead to an inefficient definition of the least advantaged, which in turn leads undeniably to an unsatisfactory redistribution that would

⁶ Rawls, *A Theory of Justice*, 302.

⁷ Rawls, "A Kantian Conception of Equality."

not comply with the principles of justice. In this first section I will analyze primary goods in order to understand the way in which they correlate to indentifying the least advantaged.

In *A Theory of Justice* Rawls explained that primary goods are social and natural. Social primary goods are income and wealth, powers and opportunities, rights and liberties and the basis of self respect.⁸ Natural goods are those endowments that entail health, intelligence and vigor.⁹ Both will be critical for the construction of expectations and consequently for their fulfillment. Individuals assess their amount of primary goods (natural and social), and construct their expectations and life plans according to what they might be able to fulfill with their respective bundle of goods.¹⁰ It follows that if primary goods are so fundamental for the lives of the members of society, individuals will want more rather than less of them. In Rawls' words primary goods are "things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life."¹¹

The previous explanation of primary goods underlines their general utility; that is, they are useful for everybody, independent of their life plans. It follows then, that there is a variety of life plans or conceptions of the good, derived from different primary social and natural goods of individuals. One therefore assumes that Rawls is determining at this stage that there are inherent differences between individuals in society that arise, not only from economic circumstances, but also from natural dissimilarities.

Inherent differences in society are the foundation of Rawlsian liberalism. Rawls accepts difference as the foundation for his theory; he therefore advances pluralism as the basis for his understanding of social justice.¹² For his theory to promote pluralism, Rawls

⁸ Rawls, *A Theory of Justice*, 62. To see a much more defined classification of social primary goods see John Rawls, *Justice as Fairness: A Restatement* (Cambridge: The Belknap Press of Harvard University Press, 2001).

⁹ Rawls, *A Theory of Justice*, 62.

¹⁰ Rawls, *A Theory of Justice*, 93.

¹¹ Rawls, *A Theory of Justice*, 62.

¹² It is important to note that Rawls wished the advancement of all *rational* conceptions of the good, or plans of life of rational individuals. Even though it might be obvious that it is difficult to support plans of life that have

advocates three main elements: toleration and democracy;¹³ and finally primary goods. Even though the first two elements are fundamental for endorsing pluralism, their objective is the avoidance of conflict between dissimilar individuals within the same society. Primary goods have a different role which refers to that which will be needed in order to embrace difference by allowing different life plans to be achieved, and furthermore will allow interpersonal comparisons to determine the least and most advantaged individuals in society.

To make interpersonal comparisons, it is fundamental to have something to compare. To do this, the thing to be compared must be common to all; everyone must have it or need it in order to decide who has more, who has less or who does not have any. If Rawls is right, then primary goods are not only wanted and desired by all because of some whim. Members of a Rawlsian society want primary goods because they need them to create and pursue their conceptions of the good. Primary goods are not only things all rational humans want (which Rawls argues explicitly), they are what rational humans *need* (which Rawls does not). This would settle primary goods as a basic general need and therefore the possibility of using them as a basis for interpersonal comparisons would be more feasible.

Assuming primary goods as a common *need* is rather controversial for at least two reasons. The first concerns how long the list of goods is, the second concerns how goods are to be defined. If the list of these goods is very broad and subject to further revision and potentially many more insertions,¹⁴ this would make primary goods subject to the major criticism of orthodox liberal economists like Milton Friedman and Robert Lucas who conceive the concept of needs as being different for everybody, cultures and individuals vary

negative impacts, it gives room to think about what Rawls understood as rationality. However, a full discussion and debate of Rawls' idea of rationality is beyond the remit of this dissertation.

¹³ T.M. Scanlon, "Rawls' Theory of Justice," in *Reading Rawls: Critical Studies on Rawls' Theory of Justice*, ed. Norman Daniels (Stanford, California: Stanford University Press, 1989), 171.

¹⁴ Amartya Sen, "Equality of What?" *The Tanner Lectures on Human Values* ([cited 20 October 2007]); available from www.tannerlectures.utah.edu/lectures/sen80.pdf

greatly therefore it must be arbitrary to enclose certain necessities as basic general needs.¹⁵ Second, this ample variation of needs tends to refer more to preferences than to needs. If the list of basic needs is too amplified then it is very possible that the peripheral needs are more *preferences* than anything else, leading to an abuse of the concept of needs.¹⁶ Under such a criticism, primary goods (especially social primary goods) have to find their place in the hierarchy of needs or face accusations of being peripheral and an abuse of the concept of real needs.

To these two arguments, Rawls would have to answer that even though he has made it possible to assume that primary goods are general needs, they are more the means to satisfy needs than the needs themselves. Income and wealth, powers and opportunities, rights and liberties and the basis for self-respect are means to an end and not ends in themselves. It would be categorized as mere greed to have wealth just for the sake of having it, even though basic needs such as nutrition would be covered. For if basic needs were not covered, we would be talking about a King Midas phenomenon, given that Midas eventually died because he could not satisfy his basic general needs.

Rawls would be in much more trouble in his defense of primary goods against the second criticism. Even though he does claim that personal preferences are not part of the theory of social justice due to the importance of individual responsibility¹⁷—a point to which I return shortly-- it is important to note that he does determine much of his theory on the idea of individual conceptions of the good and plans of life, which *are* preferences. Primary goods must first satisfy basic general needs to be useful for other functions afterward. If this is the case, it follows that the function of primary goods is based on their quantity. Individuals need a borderline amount of primary goods to first satisfy basic general needs like food and

¹⁵ David Braybrooke, *Meeting Needs* (Princeton, New Jersey: Princeton University Press, 1987), 12.

¹⁶ Braybrooke, *Meeting Needs*, 19.

¹⁷ Rawls, *A Theory of Justice*, 94-95.

clothing. From then on, larger amounts will allow individuals their use for furthering their life plans or conceptions of the good.

In this sense, interpersonal comparisons are possible. Individuals who only have a borderline amount of primary goods or less, are identified as the least advantaged, since they will be able to satisfy their basic needs but not their conceptions of the good. Those with larger amounts can be considered more advantaged. Even though Rawls meant interpersonal comparisons to be as the example above, they in fact result in an inadequate or simplistic account of the least advantaged. Several other things need to be taken into consideration, especially the existence of natural primary goods and their inherent volatility.

Primary Goods and the Least Advantaged: A Necessary Correlation

The integration of pluralism in the theory permits the existence of diverse conceptions of the good. Some might even be the complete opposite of others. For Rawls to be able to use primary goods as a basis for interpersonal comparisons, all conceptions of the good or life plans alike must need these resources to be created and to be fulfilled. However, there is a suggestion that primary goods help individualistic plans of life more than communitarian ones.¹⁸ Seeing that this will only be visible when some expectations are in the process of being fulfilled or have been already accomplished, it is possible to suggest that the functional use of primary goods in regard to with results was not Rawls' interest. He never intended primary goods to be a basis for interpersonal comparisons in terms of *results*, as Richard J. Arneson makes quite clear.¹⁹ Rawls' theory, then, does not focus on the satisfaction of individual conceptions of the good or life plans.

Individuals will construct their expectations, their conceptions of the good, their life plans; they will not, however, know if these will be achieved. Even though Rawls does not

¹⁸ See Adina Schwartz, "Moral Neutrality and Primary Goods," *Ethics* 83, no. 4 (July 1973).

¹⁹ Richard J. Arneson, "Primary Goods Reconsidered," *Nous* 24, no. 3 (June 1990): 431.

elaborate too much on this in *A Theory of Justice*, he does so in later works making it precisely clear and leaving no doubt that his theory is interested in expectations, not in the actual satisfaction of them.²⁰ The two main reasons he gives for this are that first, individuals are not necessarily bound to one specific conception of the good or life plan; they have the freedom to revise and change it. If the theory were concerned with the amount of satisfaction of each individual, it would be considerably difficult for social institutions to have an accurate general index that adequates to the changes of each individual, unless social institutions were inclined to adopt a utilitarianism approach.²¹ The second reason is that Rawls maintains that his theory is a promoter of individual responsibility.²² The object of his theory is to ensure that members of society have access to primary goods according to the second principle of justice. From then on, individuals are responsible for what they do with their share.²³ Responsibility is fundamental to avoid the existence of free riders, however the combination between responsibility and the focus on expectations can abandon certain contingencies that might not be fault of the individual such as natural handicaps, accidents or illnesses.

Even though it is quite certain that Rawls did not wish to say that these contingencies were non existent or not important, he did leave room for severe criticisms from authors including Amartya Sen, T.M. Scanlon and Richard J. Arneson who have all advanced different arguments to fill this gap in Rawls' theory. Nevertheless, these arguments are generally based on what Will Kymlicka describes as, "if someone has even a small advantage in social goods over others, then she is better off on Rawls's scale, even if the extra income is

²⁰ See Rawls, "A Kantian Conception of Equality." John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77 no. 9 (September 1980). John Rawls, "Social Unity and Primary Goods," in *Utilitarianism and Beyond* eds. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982).

²¹ Arneson, "Primary Goods Reconsidered," 434.

²² Rawls, *A Theory of Justice*, 94-95.

²³ Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (New York: Cambridge University Press, 1996), 190.

not enough to pay for extra costs she faces due to some natural disadvantage.”²⁴ The point can be explained as follows: to determine the least advantaged based only on primary goods will do little to mitigate natural handicaps and illnesses which are not necessarily caused by responsibility of the individual (although Rawls’ theory seems to exclude these contingencies as if they were the full responsibility of the individual) and might happen at any given time in life altering the achievement of expectations. However, this assumption can only be valid if the necessary correlation between the total of primary goods (which include natural endowments such as health, intelligence, vigor, and others) and the ‘least advantaged,’ is absent. What Kymlicka is apparently suggesting is that Rawls defined the less fortunate based only on *social* primary goods and did not include natural primary goods. The grounds for this argument are found in the definition of the ‘most unfortunate’ that Rawls introduced in *A Theory of Justice*. As I will presently show, Rawls disregards the necessary correlation between *all* primary goods and the definition of the least advantaged.

Rawls proposes two possibilities to define more-or-less the most unfortunate. His first proposition is to consider social class, “that of the unskilled worker, and then to count as the least advantaged all those with the average income and wealth of this group, or less.”²⁵ The second proposition is to determine the less fortunate by means of income and wealth without integrating social position as part of the index, “[t]hus all persons with less than half of the median income and wealth may be taken as the least advantaged segment.”²⁶

The first definition (of the unskilled worker), only takes income and wealth of a group as a measure to identify the most unfortunate. It also does not elaborate on the manner in which the worker came to be unskilled. There are several possibilities: either she did not have

²⁴ Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 2002), 70-71.

²⁵ Rawls, *A Theory of Justice*, 98.

²⁶ Rawls, *A Theory of Justice*, 98.

sufficient social primary goods to be able to enter a training program and develop her skills; or she had a certain handicap that enabled her to perform the tasks of a skilled worker; or she just simply lacked the necessary natural endowments to be considered a skilled worker. None of these were considered by Rawls. He made an attempt to define the less fortunate by basing his index only on economic social primary goods, leaving aside natural endowments; as well as in the second definition where this is also apparent since it only mentions income and wealth, the economic social primary goods. Even though natural handicaps and inequalities can be assumed, they are not obvious. It can be the case, as seen earlier, that the unskilled worker had the skills but lacked social primary goods to develop them, which would set her apart from the case of those with natural disabilities since she still might have the opportunity to be trained. However, Rawls does not clarify this, failing to relate properly all primary goods (natural and social) with the least advantaged.

By now it should be clear that Rawls left aside natural endowments when establishing who were the ‘least advantaged.’ Even though he only gave a mere idea of who might be taken to be the less fortunate, it still gave the impression of only awarding importance to social primary goods. The definition, as such, did not consider any “causal, genetic, or moral factors in identifying the least advantaged.”²⁷ Hence Kymlicka is right to argue that the difference principle does too little to mitigate the effects of natural inequality and handicap.²⁸

In Rawls’ definition of the ‘most unfortunate’ presented later in “A Kantian Conception of Equality,” it is apparent that he addressed the need to include natural primary goods, and to consider other factors to determine the members of the most unfortunate apart from economic goods. Yet while this definition went much further regarding natural endowments, it still has its problems.

²⁷ Roy C. Weatherford, “Discussions: Defining the Least Advantaged,” *The Philosophical Quarterly* 33, no. 130 (January 1983): 64.

²⁸ Kymlicka, *Contemporary Political Philosophy*, 71.

Rawls stated that the less fortunate could be considered,

as the overlap between those who are least favored by each of the three main kinds of contingencies. Thus this group includes persons whose family and class origins are more disadvantaged than others, whose natural endowments have permitted them to fare less well, and whose fortune and luck have been relatively less favorable, all within the normal range...and with the relevant measures based on social primary goods.²⁹

This is a definite change of mind and a more inclusive view of what is entailed in being the most unfortunate. There are, of course, similarities with Rawls' first definition presented in *A Theory of Justice*. He did not eliminate social primary goods as a part of the unknown index that should determine the least advantaged as it can be seen in the previous abstract. The first contingency is part of what Rawls considers to be, in *A Theory of Justice*, the "natural lottery"³⁰: no individual chooses the family or surrounding circumstances they are to be born in. Although the third contingency was not included in the definition of the least advantaged in *A Theory of Justice*, we shall see shortly how Rawls did refer to it in some manner in his theory. The second contingency seems to constitute the relevant difference between what Rawls focused in *A Theory of Justice* and in "A Kantian Conception of Equality."

The third contingency speaks of fortune and luck. To conduct a proper analysis of the subject, G.A. Cohen argues that it is important to discern between choice and luck.³¹ *Brute luck*, as he calls it, is that which is not the result of the individual's choices but a result that could not have been avoided by a different choice.³² On the other hand, *option luck*, represents that of a gamble or risk and therefore a choice. A person has bad option luck when she gambles or takes a risk she could have avoided, and turns out badly.³³ This last person had a choice between entering the gamble and not doing so. Therefore, she is responsible of the consequences. Option luck is what Rawls relates to his account of responsibility. The

²⁹ Rawls, "A Kantian Conception of Equality."

³⁰ Rawls, *A Theory of Justice*, 74.

³¹ G. A. Cohen, "On the Currency of Egalitarian Justice," *Ethics* 99, no. 4 (July 1989): 907.

³² Cohen, "On the Currency of Egalitarian Justice," 908.

³³ Cohen, "On the Currency of Egalitarian Justice," 908.

existence of option luck is unavoidable, and the consequences would be judged by Rawls as part of the responsibility of the individual. The person who gambled away her house was responsible for this choice, as well as the individual who chooses to have expensive tastes. I will not dwell on this matter more, since it is not part of my argument, however it is important to note that the third contingency, even though relevant is certainly difficult to determine.

The second contingency which has been not considered yet, is the most important. Natural endowments have a place within the definition that Rawls proposes, which is something that the definition in *A Theory Of Justice* lacked, and which arose serious debate among egalitarians. Even though this inclusion of natural primary goods might have shut the door for more criticisms, it did not. Apparently, the mention of natural endowments was not as reflective as it should have been, since again it did not consider openly the possibility of natural handicaps and accidents. Nonetheless, Rawls gave in this article a reason for this lack. Theories of justice, he claimed, should only concern themselves with matters of generality. It is not the general case that people are born with a natural handicap, even though this is real and certainly does happen. A theory of justice cannot focus on these cases because it would lose its main objective: to find principles that are just for all and not only for special cases. Institutions and members of society might later on find a suitable arrangement for the mentally ill or other similar cases.³⁴ This is a simplification of the theory that allows Rawls to create a theory which only deals with members of society who will not fall ill or will not be born handicapped.³⁵ They are, in Rawls' words, "those who in the normal course of things are full and active participants in society and directly or indirectly associated together over the whole course of their life."³⁶ The theory does not have to concern itself with matters of everyday life like accidents or illnesses. Although they do happen, it is not a general rule.

³⁴ Rawls, "A Kantian Conception of Equality."

³⁵ Daniels, *Justice and Justification*, 191.

³⁶ Rawls, "A Kantian Conception of Equality."

However, this does not exempt the theory from contingencies that *are* the general rule, such as the natural deterioration of natural endowments. Therefore, it is crucial, at this point, to have a much more comprehensive understanding of the nature of natural endowments, and their implications of Rawls' introduction of them in the theory.

Natural Endowments and the *Frozen Time Perspective*

Rawls' mention of natural endowments in "A Kantian Conception of Equality" analyzed more deeply reveals certain implications that contradict in part Rawls' theoretical simplification. To see this more clearly, it is important to remember that Rawls stated that one of the characteristics of the least advantaged is that their natural endowments "permitted them to fare less well."³⁷ Following this characterization of natural primary goods, there are natural endowments that permit individuals to fare *less* well. The word *less* implies that there exist natural endowments that permit individuals to fare well and probably to fare more or less well. This indicates a diversity of natural endowments with different value. The institution or the principles by which the value of endowments is awarded is unknown. However, Rawls considers that it is the economic system which decides over the worth of natural endowments.³⁸ And, if the index to determine who is better off and who is not is based on primary goods, then it is likely that in a Rawlsian society a natural endowment will be worth according to the amount of social primary goods it might provide, and therefore the amount of goods obtained will give the individual the opportunity to enter the process of fulfillment of expectations or revision of them. I do not mean to say that natural endowments alone, automatically award individuals more social primary goods. Members of society with the 'convenient' endowments will be able to obtain more 'social' primary goods due to their

³⁷ Rawls, "A Kantian Conception of Equality."

³⁸ Rawls considers that it is the economic system which decides who members of society are going to be. This system decides the wishes of its subjects. Even though Rawls states that this is the reason principles of justice must be implemented, and that the economic system must not be excluded from following these principles, there is no doubt that Rawls thinks much of economic systems and their influence on individuals. See Rawls, *A Theory of Justice*, 259.

valued talent. But be that as it may, this is not a certainty since individuals have the responsibility to act on their valued natural talents. If they decide not to do so, they will not have more social primary goods, even if they do have an important amount of “valued” natural endowments.

Assuming that everyone is responsible, the diversity of natural endowments that Rawls refers to speaks of a natural difference between individuals that results in an economic disparity. A simple example might be that of a software engineer and that of a poet. Even though both might be very talented, it seems logical to think that the engineer will have better job opportunities, and of course more income due to the computerized world we live in. The probabilities of the poet are not so high.

The value awarded to being a poet is far less than to being Bill Gates or Richard Branson. Yet this does not mean that the poet is less talented than the inventor of the Windows program or the creator of the Virgin companies. It appears to be that Rawls assumed that every individual in his society is well endowed and that the diverse endowments are valued differently, therefore those with less valuable (or less valued) talents will be part of the least advantaged. This obviously avoids the contingencies of illness or handicap, which was Rawls’ purpose. However, as much as Rawls wanted to avoid all kinds of contingencies, he did not succeed. Assuming that everyone is endowed at an equal level does not mean that they will stay that way permanently—a claim that lies at the centre of this thesis.

In “A Kantian Conception of Equality,” when Rawls defines his members of society he refers to them as being “associated together over the whole course of their life.”³⁹ The idea of a whole life course gives natural endowments even more importance than they already had in Rawls’ theory. Let us assume that a member of a Rawlsian society is born with a diversity of natural endowments that are highly valued. She is educated, secures an excellent job, and

³⁹ Rawls, “A Kantian Conception of Equality.”

after a considerable number of years, her memory starts to falter, she cannot move or think as quickly as when she was 35; not because of an illness or an accident, she is simply ageing. Her employers notice she is not as productive as she once was. She therefore retires because her abilities have diminished and she is not fit enough to continue being as productive as before. This example serves to remind us that this is quite likely to happen to every human being. The individual in the example is, in fact, born very well endowed, but this circumstance was not necessarily permanent.

This natural phenomenon is not reflected in Rawls' theory. It appears that Rawls assumed that after discarding contingencies like illness or handicap, natural endowments stay permanent over the time of a full life cycle and there are no other contingencies that might have to be included in the theory even though he did mention the idea of a whole life course. The reason for this assumption is that, as we have seen his theory is concerned with expectations not with the actual satisfaction of them. Therefore, the idea of diminishing natural endowments does not have to come to mind. Nonetheless, the stable permanence of talents is not necessarily true. Natural endowments do not stay permanent over time, they peak in adulthood and often start to diminish as old age comes nearer. Individuals nearing senior citizen hood, and also those already going through old age, will have fewer natural endowments or the level of efficiency of the natural talents are likely to have decreased.⁴⁰ This clearly places old age in a position of disadvantage compared to other positions in a life span.

Old age is not an illness, a handicap or an accident; every individual will age and become old, unless they are struck by an untimely death. There is no real need for scientific

⁴⁰ Michal Engelman and Summer Johnson, "Population Aging and International Development: Addressing competing claims of Distributive Justice," *Developing World Bioethics* (2006): 2.

proof to know that the “normal course of things,”⁴¹ as Rawls puts it when defining the members of society in “A Kantian Conception of Equality,” is to be born, to go through childhood, adolescence, adulthood, old age and finally death. However, the generality of Rawls’ theory excludes consideration of the different positions that exist in a complete life span, therefore foregoing the relevance of old age. When he wrote about the least advantaged in *A Theory of Justice* or in “A Kantian Conception of Equality,” he did not specify any particular point in time within a life cycle. After looking at the different conceptions of the less fortunate, it can be assumed that he is referring to adulthood. Nonetheless, when Rawls writes about intergenerational justice and institutions, he speaks of redistribution in education, which can be related to young age.⁴² He takes two specific points in a life span but leaves aside the rest. Thus I refer to Rawls’ consideration of specific stages in life as the *Frozen Time Account*. This Account can tell us the situation of an individual at a certain point in life, it does not recount, however, what happened before or after this specific frozen stage. When the first two definitions of the least advantaged given by Rawls in *A Theory of Justice* were listed earlier, I mentioned that the unskilled worker Rawls refers to has no past and no future. He does not tell us how this unskilled worker came to be unskilled. The evolution of natural endowments and their probable decrease is not considered in Rawls’ definition since he is following the *Frozen Time Account*.

The problem that arises from this account, is that Rawls does not really consider continuous elements, those that have a constant evolution. However, Rawls did introduce natural endowments, and so one is forced to consider the impact of endowments in an individual’s life and also their evolution due to the fact that they do not stay permanent over time. Even though I have stated the lack of attention Rawls gave to this particular problem,

⁴¹ Rawls, “A Kantian Conception of Equality.”

⁴² See Rawls, *A Theory of Justice*, 275,284.

my intention is not to discard the entire theory. I suggest instead an in depth look at natural endowments in Rawls' theory, applying and then extending the general argument of Norman Daniels and his *Life Span Account*. Daniels presents this account to develop an argument for the competition of resources between the young and the old. It is nevertheless relevant for my argument since Daniels states that, "[a]s we age we pass through institutions that affect our well-being at each stage of life, from infancy to very old age."⁴³ In this case, Daniels is arguing that each stage of life has different needs, and therefore rely on different institutions to aid them. It is important to note that I only introduce Daniels' theory to reveal the difference between age groups, and the fact that the elderly have, indeed, different needs due to their diminished natural endowments. I do not follow Daniels' in the rest of his theory as he does not give moral relevancy to the elderly – a point to which I will return at the end of the chapter.

If one follows the Frozen Time Account, then the basis for redistribution is set for two stages mentioned in Rawls' theory, infancy and adulthood and therefore the exclusion of old age is even clearer. But if Daniels' account is applied, then it is possible to assume that the natural endowments that are "given" at birth may not necessarily peak in adulthood, however it is certain that they will decrease when old age comes nearer and when it arrives. This is a lack of specificity in the definition of natural primary goods and furthermore in the definition of the least advantaged; if old age is not an illness (although individuals in this stage of life are more prone to be sick), a handicap or an accident, then it is significantly valid to include old age as an important position to consider in the theory and as a part of the least advantaged.⁴⁴

⁴³ Daniels, *Am I My Parents' Keeper? An Essay On Justice Between the Young and the Old* (Oxford: Oxford University Press, 1988), 43.

⁴⁴ It is important to set certain limits. It is evident that childhood is morally relevant and probably as important as old age. However, children still have the rest of the positions in life, whereas the elderly have already passed

Moral Relevancy and the *Least Advantaged*

Rawls awards moral relevancy to the least advantaged. Redistributive efforts have to target this group, therefore to include a certain group in this “category,” moral relevancy should be awarded and adequately argued for. I have already discussed the decrease of the levels of natural endowments in old age, this can give old age certain moral importance but there is more to this argument. Rawls specifies certain requirements in his theory that ought to be met to have a “just” system such as fair equality of opportunity and free choice of occupation. The elderly are excluded from such precepts. It is important to stress that Rawls did not intentionally exclude old age from fair equality of opportunity or free choice of occupation. However the features of this specific life stage makes the elderly difficult to be targeted by fair equality of opportunity policies. And this may make it far easier to exclude them inadvertently which is particularly problematic for a theory so concerned with equality of opportunity and justice as fairness.

Rawls’ second principle of justice establishes fair equality of opportunity with positions and offices open for all.⁴⁵ This implies also that market forces are properly regulated to provide free choice of occupation.⁴⁶ For instance, social institutions should redistribute social goods in order to equalize education given to the least advantaged children and that given to most fortunate ones. To say equalize does not mean that the level of education that rich children receive would be diminished a notch to be leveled with that of poor children; on the contrary, my meaning and obviously that of Rawls, is that the lowest level of education should receive more social goods from redistribution in order to assist it to become as close to high level education as it can be –to maximize the minimum standards; to maximin.⁴⁷

through them. The competition of resources between the children and the elderly is not part of my discussion, my objective is to give moral relevancy to old age.

⁴⁵ Rawls, *A Theory of Justice*, 83.

⁴⁶ Rawls, *A Theory of Justice*, 276.

⁴⁷ Rawls, *A Theory of Justice*, 275.

Achieving a certain level of education for all children would allow them to have more-or-less the same opportunities open to them when they advance in their life cycle. It is important to understand that the idea to equalize education for all children is to enable them to have equal opportunity to “*pursue careers – jobs and offices – that have various benefits attached to them.*”⁴⁸ Fair equality of opportunity would not guarantee the placement of everybody in certain positions. It would give every individual a more similar opportunity to get to them. If all individuals can achieve a certain level of education, it would be easier to compete for such a position, and let us bear in mind that the least advantaged are also part of society, therefore this principle also applies to them, which in turn would also apply for advanced stages in life.

The problem that is presented by old age is pointed out by Daniels “[t]he opportunity of the elderly to enter jobs or offices is not impaired by disease since they are beyond, as the crass phrase goes, their ‘productive’ years.”⁴⁹ This suggests that there is an age limit to fair equality of opportunity. There is a high probability that the competition for jobs and offices would be won mostly by the young, and the elderly would be left out due to the decrease of natural endowments.⁵⁰ Furthermore, assuming that, as Rawls mentions, there is a proper regulation of firms and private associations,⁵¹ it is possible that the jobs that might be reserved for the elderly do not match the principle of free choice of occupation, since the whole diversity of jobs is not available. Therefore the question to ask is, *does fair equality of opportunity cease in advanced stages of life?*

Apparently it does, so what Daniels is trying to say is that old age has already surpassed productive years and therefore “fair equality of opportunity” as a principle does not apply to this point in life any more, even though Rawls would not have thought fair equality

⁴⁸ Daniels, *Justice and Justification*, 192.

⁴⁹ Daniels, *Justice and Justification*, 195.

⁵⁰ Old age does not mean the individuals cannot work. Currently, many people over 65 have vigorous lives even though they are considered elderly, however as I show in chapter three there it is difficult for them to get employed.

⁵¹ Rawls, *A Theory of Justice*, 276.

of opportunity as having an age limit. It follows, then, that old age is in a position which can be considered as least advantaged and morally relevant in terms of redistribution purposes.

There is another point that gives moral relevance to old age as a stage that should be considered for redistribution purposes given its disadvantages. Daniels presents this argument to further the idea of health care needs. It will be remembered that Rawls' theory is interested in expectations and not in the fulfillment of them. One reason for this is that individuals are not necessarily committed to only one expectation or life plan, individuals are free to revise and change their life plans, their conceptions of the good. These individuals will be associated together through their whole life course as Rawls mentions in his conception of members of society.⁵² And finally members of the Rawlsian society do not fall ill or have accidents, they stay as normal as possible. If these three arguments are analyzed as interconnected, one can only assume that individuals will have through out their entire healthy life course the freedom to revise and change their life plans. It is important not to forget that Rawlsian societies do not exist. People do fall ill, therefore Daniels argues that health care needs must be met in to maintain the necessary conditions of individuals which will permit them to revise and change their plans. Daniels' argument addresses the needs of each stage of life, giving each age group the same relevance. However illuminating Daniels' point is, it is important to remember that, generally, the elderly will suffer much more regarding their of health and will require more redistribution of social goods, to maintain those necessary conditions that will allow this group to revise and change their life plans.

There are two main elements that give old age a certain priority: fair equality of opportunity and free choice of occupation have an age limit and there is an important requirement to meet health care needs. This priority gives them moral relevance to be part of

⁵² Rawls, "A Kantian Conception of Equality."

the least advantaged, not only because the elderly have less natural primary goods, but because their opportunities to acquire social primary goods is also limited.

Given that social primary goods are not easy to come by in old age, the need for a constant income also becomes relevant. Yet it is important to note that it can be considered an oversimplification not to take into consideration social class. There are elderly people who have no need for income or state health services, they are only part of the least advantaged due to their decrease in natural endowments, yet their social primary goods are in the level of a most advantaged member of society. It is important to acknowledge this distinction now to avoid confusion. Even though this might be the case of some part of the elderly, it is not a general norm. The need for a constant income certainly continues to be relevant. In *A Theory of Justice*, one can find the idea of a social minimum that is a useful mechanism for the need of a constant income in old age. Rawls was not intending to create a safety net for the elderly, but his contribution is certainly applicable when considering the need of the elderly for an income they might not earn any more.

After this lengthy analysis, the moral relevancy of the elderly becomes clear, therefore considering them as a disadvantaged group, a part of the least advantaged is not just a matter of intuition, *but one of principle*. The second principle of justice, therefore not only benefits the least advantaged generally, *but also the elderly particularly*.

Recent social policy, the moral relevancy of the elderly has been accepted world-wide with the creation and implementation of health care and state pension schemes that allow the elderly (who have surpassed their productive years) to retire with an economic income without the need to work. John Myles argues that retirement was, before the implementation of state pension schemes, a privilege of the rich; of those who had the opportunity to save

enough through their productive years.⁵³ Of course, this was not the case of the least advantaged. However, after the Second World War state pension schemes were introduced world-wide as part of welfare state policies, therefore democratizing retirement and making it possible for all.⁵⁴ To achieve these two objectives, state pension policies were implemented in such a manner that created an intergenerational contract. The system was designed so that the younger working population and their employers were taxed and this state income was immediately used to pay pension obligations of those who had already contributed to the system and were now in the elderly years. The compulsory taxes were understood as an intergenerational contract in which I pay now, but will be given a pension later with the revenues collected through the taxing of the younger generations.⁵⁵ This scheme is commonly known as Pay-As-You-Go (PAYG).⁵⁶

These programs can be considered as a Rawlsian victory on several fronts. First, they recognize that the least advantaged are not only defined by economic means, but also by natural endowments thus awarding moral relevancy to the elderly due to their diminished natural talents. They also democratize, or better yet, they apply fair equality of opportunity to retire, through redistributive efforts and social cooperation between generations. However, these programs have been severely questioned in the past twenty years due to important demographic changes that endanger the generational contract. In addition, these demographic changes have spurred debates about intergenerational justice, and the fair distribution of

⁵³ 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), 130-131.

⁵⁴ Myles, "A New Social Contract for The Elderly?," 130-131. It is important to note that old age policies were not new by the time of the Second World War, the idea of elderly social policies was first implemented with Otto von Bismarck in Prussia.

⁵⁵ Larry Wilmore, "Population Ageing and Pay-As-You-Go Pensions," *Oxford University of Ageing* (2004 [cited 5 January 2008]): available from <http://www.ageing.ox.ac.uk/>

⁵⁶ John B. Williamson and Matthew Williams, "Notional Defined Contribution Accounts: Neoliberal Ideology and the Political Economy of Pension Reform," *The American Journal of Economics and Sociology* 64, no. 2 (April 2005): 487.

benefits and burdens between generations. In the next section I show that the moral relevancy of old age becomes increasingly important and has critical impacts in these debates.

Who Has to Pay for What, And Is This Fair?

As I mentioned in the previous section, the intergenerational contract of PAYG requires that the young pay for the old. To keep this structure working, the young have to be a group considerably larger than the old.⁵⁷ However, several demographic changes have altered this structure making the elderly (generally called baby boom generation) a larger group than the young.⁵⁸ This entails that the younger population has to pay much more to sustain pension obligations that derive from the intergenerational contract.

This problem could be seen from two perspectives. The first entailed the baby boomers to take full responsibility for their low birth rate, and therefore adjust to receiving less benefits, or to provide individually for their pension costs.⁵⁹ The second would have the younger generation bear the full costs of the baby boomers' increased longevity and lower birth rates, by contributing more to the system. As can be perceived by these two approaches, either one or the other generation would suffer. This controversy ignited the intergenerational justice debate. The main question that frames the debate is, who has to pay for what, and is this fair?⁶⁰

In this particular case, fairness is apparently understood as equality, especially by debates at a policy-making level, where the main objective is to find a solution that renders generations as equals.⁶¹ This can be somewhat of a big commitment, especially if equality is understood in its pure sense: equal distribution of benefits and burdens. The current demographic situation complicates the possibility of pure equality between generations due to

⁵⁷ I will explain the demographic composition of PAYG in more detail in the next chapter.

⁵⁸ Engelman and Johnson, "Population Aging and International Development," 1.

⁵⁹ Kenneth Howse, "Updating the Debate on Intergenerational Fairness in Pension Reform," *Social Policy and Administration* 41, no. 1 (February 2007): 56.

⁶⁰ See Howse, "Updating the Debate on Intergenerational Fairness in Pension Reform," 50.

⁶¹ See Howse, "Updating the Debate on Intergenerational Fairness in Pension Reform."

their uneven growth and uneven circumstances. Therefore, to solve the problem of the population-ageing phenomenon, it might be more appropriate to use a Rawlsian approach, and talk about fairness and equality of opportunities. To follow this mainly Rawlsian perspective would entail awarding equal moral and political importance to all generations, while understanding their advantages and disadvantages to identify the least advantaged group, as well as the most fortunate. In this particular point, the intergenerational justice debate falls short.

As a starting point in the identification of the advantaged/disadvantaged, I used Rawlsian parameters to understand that the elderly are actually part of the least advantaged. As such, they are morally relevant when it comes to redistributive matters. Their situation is not shared by the young, who can take full advantage of their peaking natural goods.⁶² It might seem that to introduce this advantaged/disadvantaged perspective into the intergenerational debate would automatically give the elderly an unlimited amount of resources, and therefore an unlimited amount of importance over other age groups. This is not true from a Rawlsian perspective. The main implication of the moral relevancy of the elderly is that, in principle, it requires consideration in redistributive issues. This does not entail leaving the younger generations in a risky position unable to pursue their conceptions of the good. But it does not entail, at the same time, the implementation of policies that disregarded this moral relevancy, leaving the elderly in a vulnerable position. One of the problems that can be identified in the intergenerational justice debate, is that the moral relevancy of the elderly, as a principle, is underestimated or simply denied, therefore awarding more importance to the young without consistently justifying the disconsideration of old age in the different levels of analysis of the debate.

⁶² In this case, I am speaking in general terms, without going into the very important topic of handicapped individuals.

There are two levels of analysis within the intergenerational justice debate where the moral relevancy of the elderly has an important impact. The first is age groups understood as life stages such as childhood, adulthood and old age. These stages range from zero to over 65 years of age; the age group of childhood might range (depending of the analysis) from zero to 18 years of age.⁶³ The second level of analysis is birth cohorts, which is what we generally understand as generations, i.e. the birth cohort born in 1945.⁶⁴ Generations, therefore, are construed as the birth cohorts that are not born yet.⁶⁵

In the first case, the utility of the age group level of analysis was brought to light by Norman Daniels' Prudential Life-Time Account. As I mentioned earlier, Daniels' Account is very useful to determine the different needs of age groups, which eventually furthered my argument about the growing needs of the elderly. However, global, economic or environmental circumstances are not necessarily included at this level of analysis, since age groups are settled as the unmovable stages through which individuals pass, and it only determines the different needs of each group.

In this particular case, the sole intention of Daniels' Prudential Life Time Account was to avoid the continuous battle of resources between the young and the old, but does not give consistent moral relevancy to the elderly. Daniels suggests that this new account requires individuals to think of themselves as eventual elders, and also as prudential choosers of the way in which resources will be distributed or budgeted within their life span.⁶⁶ Childhood and old-age groups require more resources than adulthood; therefore it is prudent that institutions award unequal treatment. For example, take individual A, who is 35 years of age. Currently, she is paying to health care or social security high taxes of her salary. Her resentment is based

⁶³ Daniels, *Am I My Parents' Keeper?* 12-13.

⁶⁴ Daniels, *Am I My Parents' Keeper?* 12-13.

⁶⁵ Daniels, *Am I My Parents' Keeper?* 12-13.

⁶⁶ Daniels, *Am I My Parents' Keeper?* 12-13.

on the fact that she does not use healthcare much, and that she is not yet old enough to get a pension, thus she could use that money for other purposes. However, Daniels' account is a savings approach. Individual A should reassess her point of view, and acknowledge that she is actually saving for the needs she will have when she actually reaches old age. In this perspective, Daniels asserts that differential treatment is not, in this case, a basis for claims of justice, since each group is receiving according to their needs. At first glance, Daniels' account seems adequate because it recognizes the importance of old age. Yet if one analyses it more deeply, it becomes evident that the relevance Daniels awards to old-age is actually more a suggestion than a principle. The account is, therefore, too flexible and can shift the importance it gives to the old, to other age groups.

Daniels' purpose was to justify unequal treatment towards different age groups, as that of old age. However, the flexibility of the Prudential Life Time Account reveals the inherent problematic of Daniels' theory. He tried to award certain importance to the elderly as a smart and obvious suggestion, but not necessarily as a group that warrants a defined moral categorization for redistributive purposes. The Account leaves aside the necessary distinction of advantaged/disadvantaged. According to Daniels, if institutions redistribute according to some morally irrelevant trait like race, at the end of complete life spans, they will have made the lives of people unequal.⁶⁷ Age parameters as understood under the Prudential Life Time Account, award unequal treatment according to the needs of each age group. But, at the end of people's lives, they will not have created inequality. It follows that the unequal treatment does not necessarily have to focus more resources towards old age, it might be directed towards other age groups as long as it is the same for the subsequent age groups of equal year range. Daniels is thus considering whole temporal lives as the basis for measuring equality and confirms that his preference for old-age is merely a suggestion but not a norm.

⁶⁷ Daniels, *Am I My Parents' Keeper?* 41.

Furthermore, if old age is not given proper relevance then the solution of intergenerational justice can be biased towards the young, leaving the elderly in a vulnerable position, where they receive too little even if they are a disadvantaged group.⁶⁸

The result of such a possible bias is the transformation of Daniels' theory. Even though, his intention was not to argue that the young deserve more resources because of their peaking natural talents and abilities, the flexibility of his account might counteract his initial intentions. The result would be the same as a theory such as that of John Harris, who flat out argues that the intergenerational justice debate would be solved if the allocation of resources is directed towards prompting the lives of those who still have a life before them.⁶⁹ It follows from this, that his main argument is to award moral relevancy to the younger population on the basis that it would provide greater utility to society as whole,⁷⁰ eliminating the relevancy of the elderly on account of their disadvantaged position. The consequences would be the unfair redistribution of benefits and burdens between age groups, therefore disregarding Rawlsian social justice.

However, if the Rawlsian approach is considered in this level of analysis, the first step to take would be to specify an adequate index of primary goods to determine the advantaged and disadvantaged group. My earlier argument does this precisely, I identify the elderly as a disadvantaged group because of their decreasing natural primary goods, which eventually limits the opportunities they are supposed to get under fair equality of opportunity.⁷¹ Following this Rawlsian approach awards moral relevancy to old age in principle, and not only as a smart suggestion. Therefore, the budgeting strategy of Daniels will necessarily

⁶⁸ Dennis McKerlie, "Justice Between the Young and the Old," *Philosophy and Public Affairs* 30 no. 2 (Spring 2001): 161.

⁶⁹ Engelman and Johnson, "Population Aging and International Development," 4.

⁷⁰ Engelman and Johnson, "Population Aging and International Development," 4.

⁷¹ One possible argument against the Rawlsian approach to the elderly is that some elderly are very well endowed in terms of economic goods. Even though it is certain that some elderly are rich, this cannot be generalized. Especially if some elderly were identified as least advantaged during their entire life span.

delegate attention to satisfying needs in old age as a part of the least advantaged. An unjustifiable shift of importance, will no longer be a possibility. This does not, necessarily, entail the gobbling of resources by the elderly; it only requires that this age group be treated with the same moral and political importance than the young, and therefore is not stripped from their relevancy and their benefits; which might create policies that systematically disregard their needs.

The second level of analysis pertains to birth cohorts. In this case, the elderly can be considered as the birth cohort born in earlier years. One of the most important elements of justice between birth cohorts is the possibility of social cooperation, and therefore the pooling of external risks.⁷² Under a PAYG system, there is an inherent characterization of the elderly being a least advantaged group that are benefited by social cooperation with the younger cohorts. Nevertheless, the advantaged/disadvantaged positions can also be identified by external circumstances such as economic, environmental or demographic shocks. In this sense, the flexibility of Daniels' Account would shift importance to the younger cohort by eliminating social cooperation; therefore disregarding fair equality of opportunity to retire for all cohorts, and settling the pressures of external shocks on themselves without any opportunity of pooling with other cohorts.

This is due to the foundation of the Account. Primarily, the purpose of Daniels' perspective is based on the analysis of single individuals and not groups as such; like the example of individual A presented before.⁷³ What needs highlighting here is that if PAYG is considered under the present circumstances, the battle that Daniels is trying to avoid between the young and the old will be reignited as a war between birth cohorts currently passing through specific age groups. It might be the case that individual A (presently living at this

⁷² Erik Schokkaert and Phillipe Van Parijs, "Pensions Policies for a Just Europe: Individual versus Collective Responsibilities," *Journal of European Social Policy* 13, no. 3 (2003): 5.

⁷³ Mckerlie, "Justice Between the Young and the Old," 158.

time), along with all her age group, are paying too much into the PAYG system, because of demographic changes that happened before this birth cohort was born. This particular birth cohort (living in the adult age-group) might argue that because of this savings venture, they are left with very few resources to engage in their life plans. Furthermore, they might argue that because of low fertility rates, when they reach old age, their benefits might not be as rewarding as the amounts they payed when they were young. The reigniting of a resource war between the young and the old would necessarily come from the current birth cohorts that are now living in the young and old age groups. Considering this scenario along with the foundations of the Prudential Life Time Account, Daniels' Account would respond by shifting the importance of old age towards the younger population. One way to shift weight, would be for the young to refrain from contributing into the system, and simply save as much as they consider prudent for their old-age, be this large or poor amounts. The result would be the elimination of social cooperation between birth cohorts, and the possibility to retire would be limited to advantaged individuals.

However, if the Rawlsian approach is implemented, where the elderly have moral relevancy as a disadvantaged group, and fair equality of opportunity is part of the principle; there are other possibilities to continue with social cooperation. In this case, I will follow the Musgrave rule of risk pooling and social cooperation between cohorts, provided by Schokkaert and Van Parijs.⁷⁴ If a birth cohort is hit by unfavorable shocks during their productive years, their possibility of savings will not be extensive, therefore when they reach old age, they will require more redistribution than other cohorts.⁷⁵ Due to social cooperation this will be possible as the younger cohorts will have more favorable lives, they will be able to provide more to the old cohorts; therefore enhancing the principle of the elderly as a least

⁷⁴ Schokkaert and Van Parijs, "Pensions Policies for a Just Europe," 5.

⁷⁵ Schokkaert and Van Parijs, "Pensions Policies for a Just Europe," 5.

advantaged group. Furthermore, if the younger cohorts are impacted negatively, the state will allow them to decrease their levels of contribution towards the elderly, with a compensation from the state for the decreased benefits.⁷⁶ If the Musgrave rule is followed, importance might shift from one cohort to another due to justified external shocks *temporarily*. However, after the younger cohort goes through the bad patch, relevancy again will be shifted towards the older cohorts.

The importance of the Musgrave rule can be found in the fair equality of opportunity to retire it inherently promotes. If the rule is followed, the result will be an equal opportunity for all cohorts to retire independent of their advantaged or disadvantaged circumstances through their life span. Risk pooling and social cooperation allows all cohorts to have this opportunity. Furthermore, redistributive pressures are not equally divided between generations. The rule considers the advantaged/ disadvantaged position of cohorts in order to make an adjustment of redistributive pressures, in a fair manner, following a more Rawlsian approach.

In the case of pension schemes and the demographic problems that have impacted the systems, the Musgrave rule would not disavow cooperation between birth cohorts and the moral relevancy of the elderly. The baby boomers are reaching old age at this point, therefore their need for a pension income is becoming an urgent problem to resolve. The younger cohorts who are fewer in comparison to the baby boomers, might not want to pay these pension obligations. However, it might do well to remember that the younger cohorts will also need a pension eventually. If they decide to eliminate social cooperation; their risks will not be pooled with any later cohort. In addition, there is no guarantee that the circumstances of actual cohorts will always be positive, like in the case of the current global economic crisis. Therefore, the Rawlsian approach of the elderly and fair equality of opportunity might

⁷⁶ Schokkaert and Van Parijs, "Pensions Policies for a Just Europe," 5.

transform the question of “who has to pay for what, and is this fair?” to a more suitable question like, how can we foster cooperation between cohorts, in order to distribute benefits and burdens in a fair manner, without disregarding the least advantaged position of the elderly?

As I explain in the next chapter, unfortunately these Rawlsian parameters have not been considered to answer the intergenerational justice debate, and the high expenditures of pension programs. Several countries like Chile, Mexico and Argentina have undergone profound reforms of their pension systems, without considering at all the moral relevancy of old age. In this case, these parameters will allow me to analyze their reforms more deeply, to show the negative eventual results of disregarding the advantaged/disadvantaged positions of the Rawlsian perspective.

CONCLUSIONS

My intention in this chapter was to analyze Rawls’ second principle of justice, particularly the concept of the “least advantaged,” to argue that the elderly have a place within this disadvantaged group. I started with the analysis of primary goods as the parameters with which Rawls defines the least advantaged, therefore creating a necessary correlation between primary goods and the most unfortunate part of the population. The objective was to show that Rawls included not only social primary goods into his list, but also natural goods, like health, intelligence and vigor. This eventually led to the objective of the second section, where I argue that Rawls did not implement his correlation and only used social primary goods as the basis to define the least advantaged. Furthermore, I analyze several changes in his later works, where he tried to resolve this problem. The consequences of including natural talents as a part of the parameters to define the unfortunate group, are that natural contingencies such as old age necessarily have to be taken into consideration. Even though, Rawls did not analyze this problematic, as I argue in the third chapter, authors including

Norman Daniels allowed me to fill in the gaps in the theory by establishing the elderly as a group that can be considered as part of the least advantaged. This moral relevancy awarded to old age is not only supported by their decreasing natural talents, but by their limitations in fair equality of opportunities and in the availability of certain positions, as I argue in the fourth section.

The general conclusion at this point is that the elderly can be given moral relevancy as a disadvantaged group in Rawlsian theory. This conclusion has important impacts in the intergenerational justice debate, where its levels of analysis (age groups and birth cohorts) a loose understanding of the elderly might transfer their moral relevancy to other groups. However, as I have shown, if the Rawlsian approach is considered, these two levels of analysis can regard old age as inherently relevant, and therefore limit the design of policies that might endanger the benefits awarded to the elderly, due to their disadvantaged position.

On the surface it appears that Rawls' intention to avoid specificity and to promote generalities greatly limited the theory to an explanation or description of the duties of the state. However, read with a more careful eye, Rawls' principles of justice can be used as a base for analysis for very specific policy. *A Theory of Justice*, and more importantly the principles of justice, are not beyond particular cases.

Rawls' second principle of justice and its intimate relation with the definition of the least advantaged carries the theory from the general to the particular. The "least advantaged" were only mentioned in the theory as being a morally relevant group that required redistribution. A specific definition of what Rawls meant to be the "least advantaged" is required in order to avoid misinterpretation and therefore a faulty implementation of the principle.

After a profound analysis of social and natural primary goods it became evident that Rawls had forgone the necessary correlation between primary goods and the definition of the

least advantaged. His conception had only been founded in social primary goods and the consequence of elevating natural endowments to an upper hierarchy in the scale of primary goods was that the least advantaged became a considerably larger group than anticipated. All kinds of handicaps and illnesses as well as accidents started to take up a place within the most unfortunate population as authors like Sen and Kymlicka have argued. Even though Rawls' simplification of the theory cut back all these cases, he still left an open door for age contingencies.

It is fundamental to note that age contingencies must be viewed with some caution. It is probably the case that all ages suffer contingencies that might demand benefits from society, however to expand this too much might discredit the theory as an ambiguous exercise of who gets more. Policy makers as well as political philosophy academics must pay special attention to this, the negation of such a problem would confirm what Walter E. Schaller states: "Rawls allows individuals voluntarily and deliberately to make themselves members of the least advantaged class and thereby eligible for the benefits mandated by the Difference Principle – benefits they do not deserve."⁷⁷ Philosophers including Robert Nozick and David Gauthier would definitely agree with this, and would further their ideas about how redistributive measures promote the existence of free riders.

Considering the above, the intention of this chapter was to problematize and define the least advantaged from a different perspective than that of income or wealth. The result was the inclusion of the elderly as a part of the less fortunate individuals due to their limitations in natural primary goods. Yet their least advantaged situation did not end there. The elderly are also limited when it comes to free choice of occupation and fair equality of opportunity, which are (I might add) fundamental precepts for all members of society.

⁷⁷ Walter E. Schaller, "Rawls, The Difference Principle, and Economic Inequality," *Pacific Philosophical Quarterly* 79 (1998): 369.

This position makes the elderly part of the less fortunate and subjects for redistribution. It is important to clarify that here I tried to give evidence that Rawls only described the most unfortunate in economic terms and that this lack of specificity was a source of weakness and exclusion. However, after determining the elderly as part of the less fortunate and subject for redistribution, I also limit that to be redistributed to income. Even though I include Daniels' need of health care services, there are probably other goods that might be redistributed and that I am not taking into account. I would like to say in my defense that even though this is certainly obvious, redistribution policies are generally in the form of income transfers, especially when it comes to pension schemes, which is why I limited my argument to redistribution in purely economic terms. Furthermore, the policies I will examine in the next chapter are pension schemes which are redistributive in economic terms.

After having said that and after having discovered that old age is morally relevant, it is important to undertake a further analysis of the implications of this "discovery," especially within debates that have important implications in policy-making. As I showed, the intergenerational justice debate, spurred by demographic changes, without the Rawlsian approach I furthered in the chapter, might shift the moral relevancy of old age towards other age groups. This, in Rawlsian terminology, would entail an unfair bias and furthermore an unjust redistribution that does not take into consideration the disadvantaged position of the elderly.

To draw from the Rawlsian perspective would necessarily limit policies that (dis)considered the elderly as a morally relevant group. But as I will show in the next chapter, the creation of certain policies have undergone implementation without these important considerations; particularly the new Individual Accounts system designed to substitute state-run PAYG schemes. After I analyze this policy with the Rawlsian approach, it will become evident that the result will necessarily be *unfair* for the elderly.