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Under the Veil

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Under the Veil

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According to Norman Daniels's prudential lifespan account (PLA), because of scarcity of medical resources it is rational to adopt a health care system that distributes less resources to those at later points in their lives in exchange for distributing more resources to those at earlier points in their lives. Nancy Jecker argues that the PLA is incapable of satisfying the equality requirement—the requirement that we should be given equal moral consideration at each part of our lives (Jecker 2013). PLA is said to satisfy the equality requirement because it only subjects people to principles that that they would consent to under a fair decision-making process, such as a Rawlsian original position under a veil of ignorance (Daniels 1998). Jecker argues that it would only be fair to subject people to these principles if they would consent to them at each stage of their life; furthermore, she argues that the very young and very old may be incapable of consenting to these principles and thus it would violate the equality requirement to subject them to these principles.

Here I argue that Jecker's criticisms ignore the aspects of Rawlsian social contract theory that are thought to be fairness preserving. The rationale for prioritizing health care of the young is that doing so is expected to increase their life span, reduce the costs associated with health care they would otherwise have in their old age, and improve their quality of life. Thus, at every stage of a person's life they would prefer to have prioritized healthcare for their younger selves because had they not, their lives would be significantly worse at later points in their lives.

According to John Rawls if rational parties to a social contract are in a fair position and adequately informed about the facts, then the principles that they agree to will also be fair (Rawls 1971/1999; 1999). The appeal of Rawls's veil of ignorance is that it makes it possible to imagine a hypothetical situation—the original position—in which participants would be unbiased and have sufficient information to construct a series of principles they would consent to live by. Under the veil participants are stipulated to be rational, to know nothing about their social status and personal preferences, and to be free of biases. They are ignorant about their age, race, sex, religion, cultural beliefs, and so on. They are aware that there are different ages, races, sexes,

religions, and people with differing cultural beliefs, moral beliefs, and so forth; however, they do not know which of those people they actually are, only that they may end up being any one of those people. Participants are stipulated to be self-interested individuals whose primary goal is to adopt social policies designed to put themselves in the best possible position; however, because they are ignorant about facts about themselves, to maximize their own well-being they must advocate social policies that would benefit themselves regardless of who they actually are. The principles that would be unanimously adopted in this thought experiment are said to be fair and just.

Martha Nussbaum and E. F. Kittay have objected to social contract theories on the basis that people with intellectual disabilities are unable to consent (Kittay 1999; Nussbaum 2006). Jecker similarly argues that the very old and the very young are often incapable of consenting. At first glance these objections seem confused. Social contract theories do not require explicit consent at all, for Rawls justice is a matter of what principles one would hypothetically consent to. Furthermore, under the veil participants would be ignorant about all the details of their lives—including whether they are neurologically atypical, undeveloped, disabled, or otherwise unable to consent—but would be aware that such people exist and that they may turn out to be such people in the actual world. As such, a rational, self-interested individual under the veil would not adopt policies that are biased against the neuroatypical.

A more charitable interpretation of Jecker's objection is as a criticism of Rawls's rationality requirement. Many neuroatypical agents are capable of offering valuable contributions to our society; that the veil of ignorance imparts rationality is itself inherently biased against the neuroatypical, as the only prerequisite for a principle being just in this view is for it to be unanimously consented to by rational agents. However, it is a simple matter to modify the veil of ignorance to embrace neurodiversity: A principle is just if and only if it receives unanimous (hypothetical) consent in the original position; thus, we need only stipulate that sufficient neurodiversity exists among the participants of the original position. Although some neuroatypical

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participants may actually be incapable of consenting in the real world (because of concerns about their competence or their lack of certain psychological characteristics), it is enough that they would be able to hypothetically consent. As with the unmodified original position, the goal of participants is to maximize their well-being in the actual world regardless of whether they end up being neurotypical or neuroatypical, and thus they would advocate policies that do not unfairly discriminate on neurological bases.

Jecker expresses concerns that negative cultural attitudes toward old age and disability may influence deliberation under the veil of ignorance, such that participants would be willing to discriminate against the elderly or disabled even if they end up being elderly or disabled in the real world. This criticism is fundamentally flawed; the original position is a thought experiment—we cannot actually place ourselves under a veil of ignorance. Justice is a matter of what we would agree to in those situations, not what we actually agree to. Furthermore, the rationale for favoring the young according to Daniels's PLA is that doing so has tangible benefits, and whether this policy has those benefits is empirically verifiable. If these tangible benefits are enough to justify the adoption of these policies in a hypothetical original position, even if Jecker is correct and biased individuals attempting (and failing) to replicate the original position would adopt these policies for biased and unjust reasons, the principles themselves would still be just.

Jecker contends that it would only be fair to subject people to the principles they would adopt in the original position if they would adopt them at each stage in their life. To take this seriously is remove the veil of ignorance from the thought experiment and to reintroduce biases. This is akin to saying that it would only be fair to subject a murderer to the principles she would adopt in the original position if she would adopt them while knowing she was a murderer! In the original position, we adopt a prohibition of murder because doing so is in our interest. In the actual world murderers would be far less likely to consent to this prohibition, but this is not evidence that the prohibition against murder is unjust.

One might object to the PLA because although prioritizing the health care of the young can be expected to have

beneficial results for the young throughout their lives, those who are not young when the policy is adopted miss out on these benefits. Remember that under the veil, participants are unaware of whether they are young or not and know there is a good chance they may not be. In the original position, then, one would adopt a policy of prioritizing the health care of the young while making an exception for those who are not young at the time the policy is adopted. Thus, the currently young will have additional health benefits to offset their rationed care in the future, while the currently elderly will be allotted a greater portion of health care than the currently young will receive in the future to offset the injustice they suffered by not having this policy adopted in their youth.

Often it is painfully clear to us that we would be better off had we prioritized our health care in the past—we would be happier, our medical bills cheaper, and the available medical resources more plentiful for ourselves and others. If we could retroactively adopt this policy in the past, we would unanimously consent to do so under a veil of ignorance. However, the same reasons for adopting the policy in the past hold today, such that it is rational to adopt this policy immediately while making an exception to offset the injustices caused by our failure to adopt this policy sooner. ■

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