

Chapter Fourteen

A FAIR INNINGS OR A COMPLETE LIFE: ANOTHER ATTEMPT AT AN EGALITARIAN JUSTIFICATION OF AGEISM

Richard Wagland

1. The Fair Innings Argument and the Complete-Life View

The Fair Innings Argument (hereafter the FIA) appeals to the intuitively plausible idea that there is a certain lifespan that we should each reasonably expect to achieve, and that it is unfair if purely because of the structure and arrangements of society people do not enjoy that span of life. John Harris describes the FIA as an attempt to:

capture and express in a workable form the truth that while it is always a *misfortune* to die when one wants to go on living, it is not a tragedy to die in old age; but it is ... both a tragedy and a misfortune to be cut off prematurely.¹

So the injustice experienced by someone who has not had a good innings when they lose out to someone who has is significantly greater than in the reverse circumstances. This greater injustice arguably gives us a normative reason to withhold life-saving medical benefits from an older person, and to give them to a younger one, in situations where both need the same treatment in order to survive, but where scarcity dictates that only one can receive it. Harris therefore outlines what he calls “a reasonable form” of the FIA in the following way:

The FIA: that people who had achieved old age or who were closely approaching it would not have their lives further prolonged when this could only be achieved at the cost of the lives of those who were not nearing old age.²

The FIA is a philosophical argument that has obvious advantages for those who must make rationing decisions in the distribution of health services as well as other instances of intergenerational justice involving the distribution of benefits

between age groups or generations, and it is unsurprisingly one that has been often used.³ There is much evidence that discrimination against the old is prevalent within healthcare, and groups such as Age Concern and the King's Fund often claim that this is not so much motivated by notions of fairness as by moral prejudice against the old.⁴ It is of course difficult to assess the degree to which those who defend age discrimination on the basis of moral reasons like fairness and justice are in fact motivated primarily by prejudice, but to have a moral reason for doing something that you would like to do for immoral reasons is of obvious benefit to those who are prejudiced. This chapter, however, is not about motives but about the FIA as an argument.

There are obviously strong similarities between this attempt to justify ageism through the FIA and the justification via the complete-life view (CLV) discussed in the previous chapter. At first glance it would seem reasonable to suggest that we could simultaneously support both principles. Ronald Dworkin, for example, is, as we have seen, explicit in his commitment to the CLV within his political philosophy,⁵ but he also implicitly embraces the justice of the FIA in his moral theory, when he outlines what he calls the "frustration thesis": the "instinctive assumption of which is that it is a greater tragedy when a young person dies than when an old one dies."⁶

2. Interpreting the Two Views

It is difficult sometimes to determine whether the advocacy of age discrimination in any particular instance is based upon the CLV or the FIA. An example is Daniel Callahan's book *Setting Limits*,⁷ which outlines a defense of age discrimination in healthcare based upon the premise that the old should be willing to give up access to life-extending medical treatments so that the young might have the greatest opportunity of becoming old. He argues that "[t]here is nothing unfair about using age as a [discriminatory] category if the purpose of doing so is to achieve equity between generations."⁸ However, it is ambiguous as to whether Callahan is appealing to a CLV or an FIA in his defense of age discrimination, or whether he is relying upon some other principle. For example, he appears to be defending the CLV when he argues that beyond a certain point in their lives elderly people "will have already had their fair share of resources,"⁹ and will not be entitled to any more resources on the grounds of fairness. On the other hand, he appears to be defending the FIA when he proposes that "[a]fter a person has lived out a natural life span, medical care should no longer be orientated to resisting death," and that it would henceforth "be limited to the relief of suffering."¹⁰ As we will see below, however,

these two claims may conflict, and a “fair share of resources” may not have been exhausted by the time a “person has lived out a natural life span.”

Both justifications of ageism are concerned with the distribution of some good, and both would seem to be strongly normatively egalitarian. They both hold that if there is something to be distributed then ideally it should be distributed fairly, which is usually taken to mean as equally as possible. As the previous chapter has shown, within the work of egalitarian liberals the CLV is concerned with the distribution of either resources or welfare. While welfare can be understood as an intrinsic good, as an end in itself, resources are viewed as instrumental goods, or the means to achieve our ends. The FIA may also be interpreted in either of two ways. First, it may be a view about the distribution of the instrumental means to ensure the end of a “fair” *duration* of life. If so, the FIA would be a view concerning the means to an end in a way similar to the resource-egalitarian interpretation of the CLV. The difference between the two is perhaps that the means interpretation of the FIA would be more specifically limited to healthcare and medical resources. Understood in this way, the FIA becomes relevant only in circumstances of scarcity, as when only one of two persons can be saved with the limited resources available.

An alternative view of the FIA would be to interpret it as concerned with the end itself, and so be concerned to ensure that each person has a fair or an equal share of life itself. Such an ends interpretation of the FIA would be similar to the welfare-egalitarian view of the CLV. Oliver Leaman is one commentator who has interpreted the FIA in this way and, as he recognizes, there are somewhat implausible implications of this more extreme version of the FIA:

There are interesting consequences to [this interpretation of] the “fair innings argument.” One is that it involves an extreme form of egalitarianism. The fact that someone lives longer than someone else is regarded as patently unfair, and it is just to seek to equalise as far as possible the lifespans of different individuals.¹¹

If the FIA is a normative principle that each of us should have equal life spans, then just as it is “unfair” that some people die young, so too would it be unfair that some people live longer than their fair share. The implication is that something should be done to correct this unfairness, perhaps through a policy of enforced euthanasia for all those who have lived beyond the socially determined “fair” innings.

The first interpretation of the FIA identified above, that which identifies it with a view about means rather than ends, does not suffer from this morally im-

plausible implication, and it would remain silent on the issue of the actual life spans that different people achieved above the fair innings. It is silent on this because the view does not concern itself directly with distributing the ends, but only with means. Once the healthcare and medical resources have been directed to ensure everyone has an equal opportunity to reach a fair innings, then the actual innings people enjoy is left unchallenged.

To complicate the issue further, the distinction between whether the FIA distributes means or ends is not the only one that can be made. Like the CLV, the FIA may be interpreted as a principle of strict equality, priority, or sufficiency. As indicated above, Leaman interprets the FIA to involve “an extreme form of egalitarianism,” and this implies that its underlying normative principle is that we should each have the same length of life. A world in which everyone had exactly the same length of life would in a sense be fairer than one in which everyone lived to the fair innings but some lived much longer. Such an ideal world of equal lifespans would also be administratively more efficient because we would then be able to allocate exactly the right amount of resources for each life. However, this ideal is not an appealing one, because most people would not find it desirable to know exactly how long they had to live. Arguably what gives life much of its meaning and enjoyment is the very uncertainty of its duration. If we each knew we had an equal life span then as we neared the end of the innings we would become increasingly worried and distracted from the important things in life. Moreover, such a strict egalitarian view of the FIA would be subject to the objection that it was committed to “leveling down” the goods being distributed. If inequality is intrinsically bad and the goods being distributed are life itself, then Leaman would be right in thinking that the FIA would inherently require an older person to give up her remaining years simply because she was older.¹² Therefore, if the basis of the FIA is the ideal that our lives should be of equal length, it is not a plausible argument.

However, Leaman’s interpretation is not the only possible one. An alternative interpretation is the *prioritarian* one, that when there are two people who need the same medical resources in order to survive, one of them being nearer “old age” than the other, and only one “package” of resources is available, we should give it to the younger one. But by itself the prioritarian FIA is also implausible. If we are always to prioritize the younger person, we will have to maintain, for example, that it is better to save a thirty year old than a forty year old, or even a thirty-five year old than a thirty-six year old. Harris finds such a choice invidious because neither person has had their fair innings.¹³ What is also required, then, is some decision about exactly what length of life is “fair,” which can of course only be arbitrary. So, we might more plausibly think of the FIA as a combination of a prioritarian and a *sufficiency* view: the view that people should, as far as possible, be guaran-

teed a minimum length of life, and that society should prioritize those who have so far not enjoyed that sufficiency at the expense of those who have. This combined view of the FIA would not be subject to the more obvious criticisms outlined above, though it may nevertheless be found flawed for other reasons.

3. The CLV and FIA in Conflict

We can therefore think of the most plausible interpretation of the FIA as being a view that is concerned about means (resources) instead of ends (life itself), and a view that is guided by a principle of priority constrained by a sufficiency minimum (a threshold length of life that is deemed fair). However, although both the FIA in this formulation and the CLV are views about the just distribution of resources that require some of those resources to be withheld from the old (however defined) and given to the young, the two views have different implications. One reason for this is that while personal responsibility is both presupposed by, and a consequence of, the CLV, it is not necessary to the FIA. The CLV requires us to distribute resources so that each person has an equal share over the course of their complete lives, so that the more prudently individuals use those resources the longer they will last. In contrast, the FIA distributes resources only in such a way as to ensure that people have as fair an innings as possible; it is irrelevant how irresponsible a younger person has been about their health, or how prudent an older person has been. The younger person may have smoked and drunk heavily, had a poor diet and taken no exercise, while the older person has lived healthily, but if the FIA merely involves a claim that individuals are all entitled to a certain number of years of life, then it will nevertheless penalize the prudent older person.

In answer to this criticism we might adapt the FIA so that instead of applying to all persons it might instead only be used as a “tie breaker” between two equally deserving people. If so, then, the level of personal responsibility that each individual had taken within their lives would be relevant. If they were equally deserving then responsibility would not be an issue, because if equally deserving they would have been equally responsible. The tie-breaking FIA would then only be used to discriminate in favor of a younger person in situations where two people, one older than the other, had been equally responsible for their health over their respective lives (always supposing that such a test could be made). However, it might be argued that in such a situation the older person has in fact been the more responsible because they have been so for longer. We can imagine a situation in which a younger person receives a scarce resource instead of the older person because she

had at the time been deemed equally deserving and responsible to an older person, but who had then immediately become dissolute. By the time she reaches the same age that the disfavored older person had been when discriminated against, the now dissolute younger individual can certainly not be said to be equally deserving. So with hindsight we see that we ought to have given the resource to the older candidate after all. It does not seem absurd to suggest, therefore, that if to be equally deserving means being equally responsible for your health, then individuals should also be of equal age and so have been equally deserving or responsible for equally long. In such a case, however, the FIA would obviously be redundant because both individuals would have enjoyed an equal innings if not a fair one. The tie-breaking adaptation of the FIA therefore fails, and the criticism that the FIA ignores personal responsibility holds.

A comparison with the CLV, illustrated in the diagram below, expresses this criticism of the FIA. We can use the diagram to imagine two persons of differing ages, A and B, living simultaneously at T4 and both in need of a medical resource to prolong their lives into T5, but which, due to circumstances of scarcity, only one can have. The numbers for A and B at each temporal segment indicate the level of unhealthy living to which they have each subjected their bodies. If we imagine that the higher the number the more unhealthy the lifestyle (the more cigarettes they have smoked, alcohol they have drunk, saturated fat they have eaten, and the less exercise taken) then we can see that person A has been far less responsible in his shorter life than B has been in her longer life. Nevertheless, this is irrelevant from the perspective of the FIA. Any available resources will be directed toward the irresponsible person A to keep him alive as long as possible to ensure he reaches a fair innings, and the fact that B has taken care of her health throughout her life counts for nothing.

	T1	T2	T3	T4	T5	Total life Irresponsibility
A		50 (Child)	150 (Youth)	150 (Middle age)		350
B	50 (Child)	50 (Youth)	50 (Middle age)	50 (Old)		200

A second criticism often leveled at the FIA is that some of the elderly who have perhaps lived hard lives when they were young may have had much less enjoyment in their lives than some younger people have, and could claim in a real sense that they have not yet “had their life” or “their fair share.”¹⁴ We can again use the figure above to examine this criticism. In this instance the numbers indicate the quantity of resources that each person has spent or has had spent on them at each temporal period. Person A is only half the age of B but although he is only now coming toward the end of his youth he has used a great deal more resources in his short life than B has in her long life. Person B has therefore had a hard life and in one sense can be said not to have enjoyed as much life as person A. She may nevertheless have another couple of decades of life if she is given the medical resource they both need for survival.

As far as the FIA is concerned the person who has either achieved or is approaching old age should not have her life further prolonged when this could only be achieved at the cost of those who are not nearing old age. So, on the view of the FIA, person A would be saved and B would be sacrificed, even though his complete life share of resources will be far greater, simply because he is not yet nearing old age. By contrast, the CLV requires that the shares of resources that people enjoy over the course of their lives should be equal. As person B has enjoyed significantly less than A in this instance, any further resources should be channeled toward B rather than A. The CLV takes into consideration the past resources that each person has enjoyed while the FIA only counts life time. Moreover, B’s claim to further resources would be further strengthened from the perspective of the CLV if we were to consider the projected resources or welfare that each person is likely to enjoy in the next temporal segment (T5). The possibility that A might consume any more resources would mean that the complete life inequality between the two people would be widened further, and this would be unacceptable.

A third common criticism of the FIA is that the old have earned a right to be treated before the young because they will have paid more in national insurance contributions over their lives, and so will have contributed toward both their own old age and those who were members of the old age group before them. Again the FIA is unconcerned about this previous investment and is only concerned with the actual ages of persons, but how is this issue treated by the CLV? At first glance it may seem that the CLV would ignore this issue as well because the view is solely concerned with the fair distribution of resources to the complete lives of individuals, and it stipulates that what people are entitled to is a relatively equal share of these. By itself the CLV would indicate that if someone, like Person B in the above example, distributed their resources in a prudent way over the temporal stages of their lives, then until they had used up those resources, they would always be enti-

tled to further claims irrespective of their age. If I start out with an equal complete life of resources and then invest them carefully, adding to that investment from the income I receive through life, then I will be able to buy significantly more benefits in old age than if I had been profligate. The CLV by itself does not explain how this can be done. For this reason, as outlined in the previous chapter, the CLV has been combined with a prudential analogy (PA) by several political philosophers,¹⁵ and this hypothetical thought experiment is used to show what justice requires society to spend on the well-being of its citizens at the various stages of their lives. The combination of the CLV and a PA is therefore able to address the challenge that the FIA ignores: that the cumulative contributions of people throughout their lives give them certain claims of justice that younger people do not possess.

So, although the FIA and CLV both justify age discrimination, they can each be interpreted in different ways, and the implications of each view might conflict with the implications of the other. However, although the two views differ, a fully adequate anti-ageist argument would need to identify a common reason that accounts for the wrongfulness of both ageist justifications. This is the object of the final section of this chapter.

4. Challenging Age Discrimination

As Geoffrey Cupit notes, “the alleged injustice of age discrimination presents a puzzle,” because the “standard argument against discrimination—the argument from equalizing benefits—seems not to apply.”¹⁶ It does not apply because, as we have seen, equalizing benefits between the complete lives of separate persons might actually *justify* age discrimination rather than challenge it. It does this for the obvious fact that each of us has a turn to be old, and, by taking turns to be well-off or badly off, temporal or synchronic inequalities will even out over the course of people’s complete lives. It is this simple intuitive idea that lends discrimination on the basis of age the significant moral plausibility it enjoys. It means that age discrimination can be defended as fair because it treats everyone the same over their complete lives, and it can even be said to be in everyone’s interests. It is not therefore surprising that, as Age Concern has claimed, the anti-ageist argument is a position which has “been much less widely articulated or disseminated” than defenses of ageism.¹⁷

Nevertheless, there have been several attempts to make intelligible the intuition that age discrimination is unjust. Cupit, for example, develops an argument to express the anti-ageist intuition that is based upon the notion of status.¹⁸ He claims that each of us has an equal moral status and that the injustice of age discrimination

has its real source in that equal status not being respected throughout a person's life. So age discrimination is not a comparative injustice in the same way as sexism and racism are, and the injustice it involves is not in the inappropriate treatment of some people in comparison to others, but as far as it is comparative, in the inappropriate treatment of people in comparison to their earlier (or later) selves. While defining status is a complex issue, what Cupit's argument implies is that age discrimination is wrong because it treats persons differently at one point in their lives to the way they are treated at another point.

Another defense of the anti-ageist position has been presented by Dennis McKerlie, who attempts to preserve an appeal to the normative principle of equalizing benefits. However, rather than equalizing benefits over the complete lives of separate individuals, McKerlie believes we should, at least on some occasions, seek to equalize as far as possible the synchronic parts of people's lives. In his most recent article McKerlie refines his position from synchronic egalitarianism to a synchronic priority view, and he suggests rather that we should prioritize those individuals who are worst off at the time, irrespective of the level of resources they have enjoyed in the past.¹⁹

McKerlie supports his position by imagining two scenarios in which he believes it would be morally more plausible to be concerned about the synchronic interests of an older person than a younger one. In the first example, McKerlie believes we would prefer to help an old person who is very badly off instead of someone younger and better off, even if it is clear that the actual benefit for the older person's well-being would be smaller than the benefit to that of the younger person. If one person is presently fairly well off, it would seem odd that we should prefer to give him a larger benefit than to give a poorer person a smaller benefit. The reason it would seem odd must partly be explained by the fact that we can identify with the synchronic interests of the older person who is now in greater need. In a second scenario, McKerlie argues that we would prefer to help an old person who is very badly off rather than a younger person who is badly off, yet not as badly off, even though the older person has already consumed more resources than the younger person is likely to do in his life. When we are dealing with morally urgent claims of justice it does seem plausible that we would not be primarily concerned with the total level of benefits someone has or is likely to enjoy over their complete lives.

Both Cupit and McKerlie are responding to the age discrimination inherent within the CLV. However, John Harris has articulated what is probably still the best "anti-ageist argument" in regard to the FIA, which denies absolutely the relevance of age as a criterion of discrimination within the distribution of healthcare resources.²⁰ This anti-ageist argument claims that there is something that each of us

values equally no matter how old we are, which is to say “the rest of our lives.” So long as we do not know the date of our deaths, then for each of us the rest of our lives is of indefinite duration, and we each suffer the same injustice if our wishes to continue living are deliberately frustrated. Harris believes that:

the anti-ageist argument has much plausibility. It locates the wrongfulness of ending an individual’s life in the evil of thwarting that person’s desire to go on living and argues that it is profoundly unjust to frustrate that desire merely because some of those who have exactly the same desire, held no more strongly, also have a longer life expectancy than others.²¹

Each of these three anti-ageist defenses appeals to the idea that people not only have diachronic interests with regards to a fair lifespan or to an equal lifetime share of benefits or opportunity, but that people also have synchronic interests that are both morally significant and that are not reducible to their diachronic interests. Indeed, the two kinds of interests may conflict.²² The idea that each person has irreducible and morally significant synchronic interests gives us a reason to be concerned about any policy that leads to differential treatment for the old that is solely based upon chronological age. If each person has the same fundamental synchronic interests that demand equal treatment irrespective of age, then justice requires a balancing of the synchronic interests of different people of different ages on an equal footing. Policies which neglect or violate those interests during any part of a person’s life on the basis of something as arbitrary as age are thereby unjust. For Cupit and McKerlie these fundamental synchronic interests would be those that each of us have in enjoying a minimally decent life at each temporal moment of that life. Harris, on the other hand, effectively argues that we each have a synchronic interest in living out whatever life we still have. Looking at the problem from this perspective suggests that the strong plausibility that discrimination against the old seems to enjoy is derived from the assumption that we should give exclusive concern to the diachronic interests of persons. That is to say, to the diachronic interests we each have either to reach a fair innings or to enjoy an equal level of opportunity as everyone else over our complete lives. But this exclusive concern for diachronic interests does not sufficiently recognize the dual nature of our self-interest.

My conclusion, therefore, is that to be effective an anti-ageist argument should appeal to the idea that there are certain synchronic interests that have equal moral value irrespective of the chronological age of the individual who holds them. These interests ought to be protected for each person at each temporal period of his or her life. However, there is an important difficulty that arises from such an anti-

ageist defense. If there are two irreducible dimensions to our self-interest, diachronic and synchronic, neither of which is fundamentally prior to the other, then there is no obvious way of determining which has precedence in any particular situation. This means that we would be left with a messy intuitionist balancing of the synchronic and diachronic interests of different people in any rationing decision-making process. And of course the rationing of resources will always be necessary where demand exceeds supply.

NOTES

1. John Harris, *The Value of Life: An Introduction to Medical Ethics* (London and New York: Routledge, 1985), p93
2. *Ibid.*, pp. 93–94.
3. Alan Williams, “Intergenerational Equity: An Exploration of the ‘Fair Innings Argument,’” *Health Economics*, 6:2 (March–April 1997), pp. 117–32.
4. Age Concern, *New Survey of GPs Confirms Ageism in the NHS* (Age Concern England, Press Release, 17 May 2000); Christine Farrell, Janice Robinson, and Peter Fletcher, *A New Era for Community Care? What People Want from Health, Housing, and Social Care Services* (London: Kings Fund, 1999).
5. Ronald Dworkin, “What is Equality? Part Two: Equality of Resources,” *Philosophy and Public Affairs*, 10:4 (Fall 1981), pp. 304–5.
6. Ronald Dworkin, *Life’s Dominion: An Argument About Abortion and Euthanasia* (London: Harper Collins, 1993), p. 88.
7. Daniel Callahan, *Setting Limits: Medical Goals in an Ageing Society* (New York, NY: Simon and Schuster, 1987).
8. *Ibid.*, p. 140.
9. *Ibid.*
10. *Ibid.*, pp. 171–173.
11. Oliver Leaman, “Justifying Ageism,” *Ageing, Autonomy and Resources*, ed. A. Harry Lesser (Aldershot: Ashgate, 1999), p. 182.
12. *Ibid.*, p. 184.
13. Harris, *The Value of Life*, p. 93.
14. Harry Lesser, “Ageism,” *Encyclopedia of Applied Ethics, Volume 1 A–D*, ed. Ruth Chadwick (London: Academic Press, 1998), p. 93.
15. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).; Dworkin, “What is Equality? Part Two: Equality of Resources”; Norman Daniels, *Am I My Parent’s Keeper? An Essay on the Justice Between Young and Old* (New York, NY: Oxford University Press, 1988).
16. Geoffrey Cupit, “Justice, Age, and Veneration,” *Ethics* 108:4 (July 1998), p. 702.

17. Age Concern England, *The Millennium Papers: Values and Attitudes in an Ageing Society* (London: Age Concern England, 1999), p. 28.
18. Cupit, "Justice, Age, and Veneration," p. 709.
19. Dennis McKerlie, "Justice Between the Young and the Old", *Philosophy and Public Affairs*, 30:2 (Spring 2002), pp. 152–177.
20. Harris, *The Value of Life*, Chapter Five.
21. *Ibid.*, p. 90.
22. J. David Velleman, *The Possibility of Practical Reason* (Oxford: Clarendon Press, 2000), pp. 56–84.