Ageing, Justice, and Work: Alternatives to Mandatory Retirement

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1. Introduction

Mandatory retirement is prohibited in a number of developed economies, with a few exceptions made for specific industries. While some jurisdictions have taken a more contested path to abolition than others, the trend in recent decades has been towards protecting an employee's right to keep working.[1] But mandatory retirement was once common – not because it was required by employment law, but because many employers included it in long term employment contracts. Whether imposed by law or merely included by employers in contracts, it is easy to perceive mandatory retirement as arbitrary, unfair, and/or discriminatory. And yet, it was present during an era (the mid-to-late 20th century) when labour markets offered historically high potential for social mobility and the accumulation of wealth. Given these facts, we might wonder whether there is a case for mandatory retirement, or perhaps something approximating it. In this chapter, we aim to assemble some answers to this question.

As a guide, here is how this chapter is structured. In section 2, we briefly explore the issue of age discrimination. In section 3, we rehearse the most intuitive employment-based case for mandatory retirement, showing how it draws much of its force from the lump of labour fallacy. In section 4, we identify a different sort of argument for mandatory retirement, one based on enabling employers to incentivize employees in a controlled way. A specific version of this argument, associated with Edward Lazear, sees mandatory retirement as a device for employers to structure wage payments over time to optimize workers' performance. In section 5, we argue that, in spite of Lazear's argument having force, some more modest proposals are more attractive. We defend one such measure, whereby employers have a right to reduce the number of hours of older workers. In section 6, we register some complexities relating to the fact that economic conditions are not constant across generations.

2. Mandatory Retirement and Age Discrimination

[1] Britain finally abolished employer rights to impose mandatory retirement with the Equality Act in 2010. See Blackham (2016: ch. 3). In the USA, employees have held this right since the Age Discrimination in Employment Act in 1967. Similar protections have existed in Australia and Canada for some decades, though their precise content varies across states and provinces. We note that there are significant exceptions to the trend towards abolishing mandatory retirement. For example, several member states of the European Union (EU) continue to practice mandatory retirement, as permitted under the EU's Employment Equality Framework Directive.

The most legally influential objection to mandatory retirement contends that we should rule it out on the ground that it wrongfully discriminates on the basis of age.[2] At the heart of this concern is that fact that this policy treats individuals differently on the basis of personal characteristics for which they are not responsible, and, in this way, involves ageist discrimination morally analogous to other forms that we take to be uncontroversially wrongful, such as sexism and racism. Proponents of this objection can acknowledge that the injustices of sexism and racism tend to be graver than those of ageism, but that is consistent with the conviction that all three practices are wrongfully discriminatory. We can call this the *discrimination objection* to mandatory retirement.

In addressing this objection, we can exploit a distinctive feature of ageism: since we all age, we are all subject to it at some point, at least unless we die young. The same is not true for sexism and racism. Norman Daniels explains the significance of this fact as follows:

> If we treat blacks and whites or men and women differently, then we produce an inequality between persons, and such inequalities raise questions about justice. For example, if we hire and fire on the basis of race or sex…, then we create inequalities that are objectionable on the grounds of justice…But if we treat the young one way as a matter of policy and the old another, and we do so over their whole lives, then we treat all persons the same way. No inequality between persons is produced since each person is treated both ways in the course of a complete life. Thus the banal fact that we age means age is different from race or sex for purposes of distributive justice.[3]

The upshot of this is that, since everyone ages, it is a mistake to invoke the discrimination objection to impugn mandatory retirement, at least under the assumption that mandatory retirement is maintained across generations consistently. Examining this assumption requires us to distinguish between discrimination between age groups, and the different idea of discrimination between birth cohorts. We return to this point in section 6.[4]

Critics might deny that a practice can be wrongfully discriminatory only if it produces inequalities between individuals. In particular, mandatory retirement may still prove wrongfully discriminatory if it disrespects older workers or because it involves prejudice against them. If this were the case, then the discrimination

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[2] For discussion, see Busby (2019) and Lippert-Rasmussen (2018). Blackham (2016: 46-51) provides a summary of the way in which this argument has been both invoked and resisted in actual legislation.

[3] Daniels (1996: 259).

[4] We are not the first to note how the reasoning in the passage from Daniels can be applied to rebut discrimination-based opposition to mandatory retirement. See Chandler (1996: 37-40). Wedeking (1990) also anticipates Daniels's reasoning.

objection would not disappear merely because everyone is subject to this treatment at some point in their lives. In response to this concern, we note that, while it is possible that mandatory retirement policies might be presented in ways that signal a disrespectful judgment about the value or productivity of older workers, it is possible to offer a justification for mandatory retirement that works against this judgment.[5]

To be clear, these remarks fall some way short of establishing that a policy of mandatory retirement is justified. Indeed, the fact that everyone is subject to such a policy gives us by itself no reason to enact it. For example, we might object to the universal military conscription of young adults because it interferes too greatly in individuals' lives. Pointing out that everyone must go through conscription at some point is no rejoinder. The wrongness of military conscription does not consist in any ageist nature. Rather, if it is wrong, it must be wrong for independent reasons, like the interference invoked by the typical objection. It is in the light of this that arguments about the justifiability of military service must focus on our reasons for and against the policy, rather than on its ageist nature.

In a similar vein, it bears noting that two policies may treat individuals equally over their complete lives, without these policies being on a moral par with each other. For example, we can contrast mandatory retirement with laws that grant younger workers a lower minimum wage than that enjoyed by the rest of the population. Even if these two policies were to have an identical effect on individuals' complete lives, there may be weighty reasons to prefer the abolition of one of these policies over the abolition of the other. But such reasons will have to come from considerations that arise independently of a concern for equal treatment over a complete lifespan.[6]

If this analysis is correct, then, we should draw the same conclusions in the case of mandatory retirement. What matters is whether there are compelling justifications for it in the first place, not whether it treats individuals differently at different points in their lives. We explore this issue in each of the next two sections, where we consider two distinct arguments in favour of mandatory retirement.

3. The Argument from Rationing

According to the *argument from rationing*, mandatory retirement is justifiable when and because it produces a more just distribution of employment opportunities. The motivating thought is that, without legislation of this kind, older workers will hog

[5] See our comments below as to how some proposals (including the one we endorse) avoid claims about worker productivity declining with age, even if in most cases the proposal would gain some additional force from this being the case. We set aside any further discussion of this complication, which would require an investigation into the various reasons for which age-based discrimination would be wrongful. For discussion of these issues, see Bidadanure (2017).

[6] Chandler (1996: 42-44).

scarce employment opportunities, denying these opportunities to those who are younger. In the worst cases, the effect of this may be that a greater number of individuals (of pre-retirement age) persist in involuntary unemployment. Mandatory retirement combats this trend by forcing older workers to relinquish their jobs, creating employment opportunities that would otherwise be unavailable, for which those who are younger can compete.[7]

Advocates of the argument from rationing need not contend that mandatory retirement causes firms to hire more workers at any single point in time. Instead, what matters is that, because of the higher rate of turnover of workers that the policy produces, firms must share the same amount of work over a larger number of workers in the long-run. To illustrate this reasoning, let us suppose that a firm has the need and financial resources to hire only person to run its website on a day-to-day basis. In the absence of mandatory retirement, the firm may be able to make a new appointment to this position less regularly than with the policy in place. This is because there is some chance that the incumbent worker will continue in that position past the point at which she would have been forced out under the alternative regime. Crucially, if mandatory retirement were then introduced, there is no reason to think that the firm would suddenly increase the number of website specialists on its payroll. After all, the firm needed only one person to perform this role prior to mandatory retirement, and this change in legislation will not affect the demands of the role. For this reason, we should not expect this policy to cause this firm to hire more workers at any single moment.

Instead, the hoped-for effect of mandatory retirement is that the firm will hire a larger number of total workers across a longer time period. For example, it may mean that, over the course of a century or so, the firm hires four website specialists for an average of 25 years each, rather than three website specialists for an average of 33 years each. Of these four workers, three of them would have been employed for eight years more under the alternative system in which they were not forced to retire, or so we can assume, and therefore these individuals have been made worse off as a result. But one of them – we can call her Silvana – has been made substantially better off: whereas she would otherwise have never worked for the firm, now she enjoys 25 years of employment. Proponents of the argument from rationing plausibly maintain that it is better for each of four individuals to have 25 years of employment, followed by an earlier retirement, than it is for three of them to be employed for 33 years and one of them to be denied the offer of employment altogether.

There are comparative and non-comparative versions of this argument.[8] The first version rests on a *comparative* claim about the unfairness of some individuals suffering worse employment prospects than others, at least through no

[7] Kellaway (2012).
[8] For this influential distinction, see Parfit (2000).

responsibility of their own. For example, we might worry about the fact that members of younger generations have less valuable prospects for success in the labour market than some members of older generations who have enjoyed decades of gainful employment. Again, we return to this idea in section 6. The second version of the argument appeals to a *non-comparative* claim about the moral and political importance of each individual having reasonable employment opportunities. On this view, there is nothing disvaluable in itself about some individuals suffering worse employment prospects than others through no responsibility of their own. Rather, our reason to worry about members of older generations hogging employment opportunities is that this diminishes the labour market opportunities of members of younger generations. Though comparative and non-comparative versions of the argument from rationing offer distinct, though compatible, explanations for their conclusion, they unite behind the conviction that mandatory retirement is a tool whose use would make the distribution of employment opportunities more just.

One objection to the argument from rationing is that it risks misdiagnozing the problem that mandatory retirement is supposed to solve. In particular, the argument is appealing only when there is a surplus of younger individuals each seeking a position currently occupied by an older worker. But perhaps all this reveals is that there is an oversupply of labour for a particular industry, meaning that there are more individuals who have trained to enter an industry than the number of jobs in that industry. Returning the example above, these remarks suggest that Silvana's real problem is not that the older workers are hogging their jobs. It is that she has trained to enter an industry with too few opportunities. Of course, the fault need not lie with Silvana here. For example, it could be that her society trains too many individuals to enter an industry that lacks a sufficient number of jobs.

There is something to this response. In fact, it might well be the case that a large problem with the academic labour market, at least in some parts of the world, is that universities train too many graduate students, given the employment opportunities available. Addressing this issue by reducing the supply of trained labour would relieve much of the pressure on older academics to retire in order to create new employment opportunities for younger generations. If that is correct, then the argument from rationing would lose some of its appeal.

However, this line of reasoning is a little too quick. To see this, let us suppose that, anticipating the oversupply of labour in the technology industry, the government successfully incentivizes young individuals such as Silvana to train for retail instead. The problem is that it is conceivable – indeed, perhaps even likely – that the employment opportunities in retail are less valuable than they would have been in the technology industry if mandatory retirement had been introduced. That is, the government has circumvented the need to introduce mandatory retirement by reducing the oversupply of labour, but only by acting in a way that risks worsening the employment opportunities of individuals such as Silvana. The implication of this finding is that, in order to know whether reducing the oversupply of labour in a particular industry is preferable to mandatory retirement, we need to know more about the quality of the employment opportunities that are on the table. The upshot is that, at most, the argument from rationing can provide us with only a highly qualified case for mandatory retirement.

Let us now turn to an objection to the argument from rationing that is more damaging.[9] It stems from the fact that the argument rests on a controversial empirical claim, namely that mandatory retirement improves the employment prospects of some individuals, mainly members of younger generations. This is indispensable to the example we discussed above, in which Silvana benefits from the fact that the firm's other three website specialists are forced into retirement. However, much of the appeal of this analysis derives from the lump of labour fallacy, which refers to the normally mistaken assumption that the demand for labour is fixed. In simple terms, it is often an error to assume that the total supply of employment opportunities is invariable such that we should conceive of older workers as reducing the labour market prospects of younger individuals.[10]

Of course, this assumption is plausible for some positions, such as that of President. Fairly obviously, a larger number of individuals hold the position of President over a specified time period in political systems in which there are limits on the number of terms that someone can hold office than in those without such limits.[11] However, the issue is that, for most positions in most industries, the demand for labour varies over time. For this reason, it is typically unsafe to assume that a sensible way in which to create new employment opportunities for younger generations is to force out older workers.

As evidence for this, we can consider the post-war rise in women's labour market participation in most developed economies. If demand for labour were fixed, then what we would have seen is a huge increase in rates of involuntary unemployment, as more women entered the labour force to compete with men for a fixed number of posts. But this is not what happened. Instead, we witnessed a corresponding increase in the demand for labour. This is due to the rising levels of economic output and consumption that were made possible by this trend. We should expect something similar in the case of older workers. This is because, as a general matter, the demand for labour should be no lower when older workers are economically

[9] For related discussion, see section 2 of Bidadanure (forthcoming (a): ch. 5).

[10] This fallacy, or at least the phrase 'lump of labour', was probably first introduced by Schloss (1891). For discussion, see Walker (2007).

[11] We make this claim for illustrative purposes, acknowledging that the case for term limits in political office is not best justified by concerns about the just distribution of jobs, but rather concerns about uncapped political power.

active than when they are retired and so more dependent on state benefits.[12] Indeed, a recent study lends further support to this thesis, concluding that there is 'no evidence that increasing the employment of older persons reduce either the job opportunities or wage rates of young persons…If anything, the opposite is true'.[13]

To be clear, our view is not that the lump of labour fallacy applies to all industries, such that mandatory retirement can never create new employment opportunities for younger generations. We are open to the idea that, for some industries where the demand for labour remains stable, even if not fixed, then mandatory retirement might have its intended effects. This might include a number of public sector professions, such as in the judiciary. However, for the reasons we have mentioned, we are suspicious that this point generalizes across much of the labour market. As a result, the argument from rationing fails to provide a compelling justification for mandatory retirement in the majority of cases.

4. The Argument from Capped Rewards

Now we turn to the *argument from capped rewards* in support of mandatory retirement, according to which the policy is justifiable when and because it increases firms' economic efficiency. Viewed in this light, mandatory retirement is attractive because it allows firms to structure a worker's wages optimally over her lifetime without having to pay her high wages indefinitely. Firms will want to ensure that the rewards of higher pay in old age do not go beyond what is necessary to motivate workers earlier in life. One influential position, advanced by Lazear, is that the promise of significant future rewards incentivizes individuals to work harder when they are young.[14] On this view, rather than pay a worker according to her marginal product at any given time, a firm can increase productivity over the full term of employment by withholding benefits until later in life and making these conditional on satisfactory performance. This means paying a worker less than her marginal product when she is young, but offering to pay more than her marginal product when she is old so long as her performance is strong up to that point. In a system in which there are fewer opportunities for a worker's wages to increase over time, there is less of an incentive for her to work hard during her younger years.

Mandatory retirement, then, gives employers the ability to delay rewards, *subject to an upper bound*. If a firm has no way of knowing when a promoted employee might leave, it takes a bigger risk when encouraging productivity in earlier years by increasing a worker's pay later on. Accordingly, employers have either to reduce the extent to which they structure wages over a long term contract, perhaps by reducing the availability of promotion, or to cap payments in some other way,

[12] Buttonwood (2012).
[13] Munnell and Wu (working paper).
[14] Lazear may have been influenced by the view that firms are generally organized to prevent workers from shirking. For example, see Williamson (1985). For further philosophical discussion of this view and competing views about the nature of firm hierarchy, see Singer (2019).

maybe by using indirect or bogus methods to lay off older staff, such as internal restructuring. Alternatively, employers might abandon long term contracts altogether, leading to an increase in precarious employment, even for those workers disposed to maximize their productivity.

Strictly speaking, the argument from capped rewards does not depend on workers becoming less productive as they age, simply because they are *older*.[15] Instead, it merely depends on the claim that workers will be more productive on average, over a 'complete' working life, if some rewards are delayed. This means that it is possible to endorse the argument (or some weakened version of it, as we do below) with less danger of sending a potentially disrespectful signal about the lower value of older workers. Efforts to induce higher productivity earlier on may make it the case that productivity drops off with age, even if what is happening is merely that productivity 'returns' to a level no lower than what would have been present during younger years, had the incentives of later promotion and pay rises not been in place. This helps to show that any vague claim to the effect that older workers are less productive is in fact ambiguous with respect to the baseline against which productivity is measured. The claim that older workers simply work less productively in virtue of being old is distinct from the claim that they work less productively in virtue of having reached the point at which they have responded to and benefited from incentives offered to them earlier in life. We think that it is clear that the second claim carries less potential for a disrespectful signal about the value of workers: if older works produce less than younger workers because they have merely run out of incentives to which younger workers are still responding, any argument that depends on this premise need not rely on any potentially disrespectful claim about the impact of age *per se*. The argument from capped rewards can draw force from either claim being true, but gets sufficient force from the claim about responding to incentives being true.

Nonetheless, the argument still has additional force if productivity does in fact decline with age in ways prior to, and that would occur in the absence of, any wage structuring aimed at incentivizing higher productivity early in a worker's life. Though it is widely accepted that older workers tend, albeit with numerous exceptions, to become less productive as they age, at least past some point, the causes of this are not well understood.[16] However, two factors stand out as potentially pertinent. First, at least in some industries, workers' productivity tends to decline as they age because of their deteriorating physical condition. This may be true for manual work, such as firefighting, construction, and some forms of nursing. Second, as technology changes, so too the skills of older workers become obsolete. The same is not true for younger workers who, having trained more recently, are more likely to be familiar with the newest technology.

[15] For discussion, see Ash and MacLeod (working paper).

[16] Aiyer et. al (2016) and Lee (2016).

We emphasize that these two points hold independently of any tendency for younger workers to be more productive simply because the structuring of wages has been designed to incentivize this. That is to say, the physiological effects of ageing and changes in technology may render older workers less productive even if all workers were paid the same amount at all ages.

To be clear, advocates of the argument from capped rewards should acknowledge that mandatory retirement may involve considerable economic costs as well. As noted in the previous section, we have weighty reasons to prefer older workers to be economically active rather than retired and so more dependent on state benefits. But these reasons might not be decisive, especially if the benefits made possible by incentivizing individuals to work harder when they are young are sizeable.

The most serious worry with the argument from capped rewards, we think, is that there are measures beside mandatory retirement that deliver similar or greater economic gains and that have a range of advantages over that policy. This is the issue that we explore in the remainder of the chapter, though we pay special attention to one set of advantages, as well as to the fact that, since mandatory retirement has been legally prohibited for some time in most industries, feasibility concerns may favour something less than a full transition back to it.

5. Alternatives to Mandatory Retirement

One set of objections to the argument from capped rewards target the empirical thesis that mandatory retirement enables firms to increase their workers' productivity. For example, if individuals tend to discount future rewards, as is widely believed, then the promise is higher pay in ten or twenty years' time may provide an ineffective incentive to work harder now. Though this is an interesting suggestion, we lack the space (and competence) to examine objections relating to the psychology of workers. Instead, we focus on two more general problems for any defence of mandatory retirement that draws on the idea of capped rewards.

First, as method for improving efficiency, mandatory retirement has a clear heuristic character. This is because, since there are significant differences between workers, we should expect considerable variations in their optimal retirement ages. Moreover, these variations will not be transparent to employers until after the fact: it will be very hard, if not impossible, to identify any individual worker's optimal retirement age in advance when the clause is written in to a worker's employment contract.[17] If employers had the right to force a worker to retire from their firm, but they could choose not to exercise this right in the case of especially productive older workers, then the efficiency gains might be greater. This is because it would allow firms to structure a worker's wages optimally over her lifetime without having to

[17] Though firms can mitigate this problem by promoting individuals are different stages, there remains potential for some workers to slow down sooner as they climb the ladder.

pay her high wages indefinitely, and it would allow them to keep on those older workers who remain especially productive.

Second, the argument from capped rewards risks committing what we might call the *atomistic fallacy* regarding workers' productivity. The important point is that, when judging a worker's productivity, we must be sensitive to any interaction effects between workers. Workers are usually not isolated converters of inputs into outputs, especially not when employed in teams. Stated so generally, this is hardly a controversial claim, and is vindicated by core presuppositions in labour economics relating to the gains associated with the division of labour and specialization. More subtly, though, the collective productivity of workers might be enhanced by factors such as the presence of workers who have been in the same firm for a long time. These workers may possess valuable 'institutional memory' and other skills that accrue as a result of familiarity with the workplace and/or its industry. These skills and knowledge may endure in spite of, and might even offset, productivity reduction due to the physiological effects of ageing and changes in technology. These points can be easily overlooked in traditional economic analysis.[18]

In addition, a distinct worry with mandatory retirement arises from the fact that older workers who are shut out of the labour market altogether may have to bear some especially serious costs. Mandatory retirement can cut off an older worker from a social network on which she is highly dependent and, in the worst cases, this process can seriously damage her health.[19] And, though it may be possible to integrate into new social networks, including through short-term employment contracts, this can be very costly. Because of this, we may have special reason for regulating labour markets so as to allow older workers to continue in their roles.

We acknowledge that the various deficiencies of mandatory retirement on which we have focused do not apply with equal measure to all workers or workplaces. But we believe that the problems are sufficiently widespread to justify investigating some alternatives to the policy. We now turn to this task.

Though Lazear recognized the efficiency-based appeal of mandatory retirement, he was aware that it might be too blunt an instrument: 'one must ask why the productivity decline [of older workers] is dealt with by terminating the worker rather than by reducing his wages'.[20] The suggestion is that, once we reach the point at which higher wages ceases being necessary to incentivize harder work when someone is young, the appropriate response may be to reduce her wages rather than to force her to retire from the firm. Saul Levmore has recently discussed *rate-*

[18] Anton (2016).
[19] Wester and Wolff (2010).
[20] (1979: 1262). He went on to conclude that 'none of the so-called explanations [for preferring mandatory retirement] describes why it is optimal to terminate a worker at a certain age rather than reduce…wages accordingly and in a continuous fashion' (1263).

reduction proposals of this sort.[21] He speaks of a salary trajectory that follows 'an inverse U', whereby a mandatory retirement age is replaced by an age (perhaps earlier than the age at which retirement would have occurred) where employers can, if they wish, reduce a worker's wages.[22] Policies of this kind are attractive for several reasons. First, employers have the option of reducing wages, but there is no requirement for them to do so. This means that they may continue to pay high wages to older workers, say, in order to keep especially productive workers on the books. Second, the policy enables employers to retain less productive older workers with reduced pay, which may be preferable to forcing them to retire from the firm. This is not only because these workers remain somewhat productive but also because, as we have noted, we may have special reasons to allow older workers to continue in their roles.

While we agree with Levmore that rate-reduction proposals are an improvement on mandatory retirement, our sympathies lie with an alternative scheme. In particular, we propose a policy of *time-reduction* that gives both employers the right to reduce the hours of older workers. Again, on this view, employers have the option of reducing hours, but there is no requirement for them to do so. This means that they may continue to employ older workers on a full-time basis if they wish to do so. In comparison with Levmore's proposal, what is distinctive about our view is that employers may not reduce the pay of older workers while requiring them to show up for the same number of hours each week or to complete the same number or kinds of tasks. Reduction in hours is not reduction in rate of pay per hour.

In proposing a time-reduction scheme, we have in mind a broader set of arrangements than is common in many contemporary labour markets. More specifically, part-time employment normally occurs in a narrow range of ways, typically implemented over a short time span, namely the working week. Part-time workers tend to work between one and four days a week, rather than, say, for one week per month or for four months per year. Not working on Fridays may be fine for some kinds of employment, such as bus driving, where the rate of work remains pretty constant. But an office worker whose formal hours exclude Fridays may find that her employer and colleagues respond strategically by placing more demands on her earlier in the week. The upshot is that this worker may end up doing the same work as a full-time member of staff, but be paid for one day fewer.

This problem is exacerbated by the fact that work associated with computers, emails, and the like is hard to separate physically from the worker, as the capital often literally follows them around on their smartphone. Because of this, the demands of employment can easily spill into an individuals' free time, and so the advantages of working only four days a week rather than five may turn out to be

[21] Levmore and Nussbaum (2017: 39-53).
[22] To save words, we suppress Levmore's observation that a mandatory 'inverse U' might be considered alongside a discretionary one.

much less significant in practice than on paper. In these circumstances, part-time employment may be much more attractive if it operates over a longer time span with employees working one week per month or for four months per year, for example.

Both time-reduction and rate-reduction schemes preserve the logic of the argument from capped rewards. In each case, the idea is that employers would prefer to pay older workers a higher rate than younger workers, but only so long as they have a means to limit the financial commitments they incur to older workers as a result. As with Lazear's argument, this does not depend on the judgment that older workers are simply less productive in virtue of being old. On both schemes, the goal is to give employers a means of avoiding having to pay older workers a higher wage indefinitely, but to introduce a degree of flexibility not secured by blanket mandatory retirement.

Why prefer time-reduction over rate-reduction? There are two main reasons. First, time-reduction policies serve workers' interests to a greater degree than rate-reduction policies. This is because, when a firm lowers the wages of an older worker but requires her to work the same number of hours, this makes her straightforwardly worse off, as the only change is that her income goes down. Changes of this kind are bad for workers in themselves and, beyond this, they may convey a message that older workers interpret as an affront to their worth.[23] But these concerns do not arise, at least not in the same way, when a firm reduces the hours of an older worker. In this case, the worker gets something in return, namely more time away from work, which effectively compensates (albeit perhaps only partially) for her reduced earnings. Because of this, reducing the hours of an older worker does not make her unambiguously worse off.

Second, earlier we noted that older workers tend to become less productive as they age, at least past some point. While this is true, we must be sensitive to the fact that productivity varies with the number of hours that an individual works. This is true for workers of all ages, of course, but we might expect long hours to take more of a toll on older workers than younger workers, at least in some physically-demanding lines of work. Faced with these facts, it may be in everyone's interest for an older employee to work reduced hours at near-maximum capacity rather than for her to work full-time for reduced wages.

In addition to this, time-reduction policies avoid the problems that afflict mandatory retirement. In the first instance, let us recall the atomistic fallacy, committed by overlooking the interaction effects between workers and, in particular, by ignoring the fact that older workers may have an especially large

[23] We are hesitant to put much weight on this point. This is partly because it is unclear that older workers would interpret a pay cut as an affront to their worth, and partly because, even if this is so, it is unclear that this gives employers any serious moral reason not to act in this way.

institutional memory. Here it is significant that older workers can make distinctive contributions without being employed on a full-time basis. What matters is that enough of these individuals are around enough of the time, not that all or any of these individuals are around permanently.

Finally, we noted that we may have special reason for regulating labour markets so as to allow older workers to continue in their roles, given that employment can be a valuable source of social networks. Importantly, time-reduction policies meet this demand since access to these networks is normally not threatened by reduced hours. This is because the good in question has a satisficing character: what matters is that a worker shows up for a sufficient amount of time, which may be only one day per week or one week per month. This may be enough to access the relevant social networks.[24]

6. A Note on Background Conditions

Much everyday talk of 'generations' obscures an important distinction between age-groups and birth cohorts.[25] An age group refers to a group of individuals currently at a certain age. A birth cohort refers to a group of individuals born at a particular time. Talk of 'generations' is often ambiguous between these two different ideas. An age group can expect to become, or once was, another age group: teenagers will eventually become middle aged, for example. But this is not true for birth cohorts: millennials will never become baby-boomers. In section 2, so as to distinguish age discrimination from racist and sexist discrimination, we noted that inequalities between age groups are compatible with equality over individuals' complete lives. But it remains possible for a policy that formally treats everyone identically over their complete lives to treat different birth cohorts differently in practice. This is because of the simple fact that birth cohorts differ from one another in living out their lives through different periods of history, and under different social and economic conditions.

Writing thirty years' ago, Gary Wedeking noted that the move to abolish mandatory retirement creates a problem of this sort. At the time of abolition, older workers in an earlier birth cohort had benefited from decades of employment where firms structured wages so as to incentivize individuals to work harder when they are young, but with the expectation that the firm would not have to pay these wages indefinitely. However, with the abolition of mandatory retirement, firms then incurred additional costs, some of which were passed on to the next birth cohort of workers, who, in effect, were required to subsidize the prolonged occupancy of jobs by older, higher-earning workers. The economic contraction following the pandemic in 2020 may trigger something like the reverse of this process. Many older employees who have worked on the assumption that they would not be forced

[24] Wester & Wolff (2010).

[25] For discussion, see Bidadanure (forthcoming (a): ch. 1) and (forthcoming (b)).

to retire may find themselves suddenly exposed to involuntary redundancies. (Perhaps the same goes for some younger workers as well, though employers may prefer to offload older staff with higher salaries and lower productivity.) Whereas a generation of workers was in a sense benefitted twice when mandatory retirement was abolished, this time a generation of workers may be hurt twice.

These episodes point to a more general issue with laws, such as retirement policies, that target specific stages of individuals' lives. Even if these measures formally apply in the same fashion to successive birth cohorts, their effect on individuals' opportunities may vary considerably depending on the background social and economic conditions. To this extent, arguably it is misleading to maintain that, since everyone ages, everyone is affected equally by policies such as mandatory retirement. We would stress, though, that the ebb and flow of economic conditions over time is a problem for *all* policies that remain in place from one generation to the next. This is important since it implies that our proposal regarding time-reduction for older workers faces *no special* difficulty owing to the tendency for some generations to have it better or worse than others merely because of changes in background conditions.

In the light of these considerations, one possibility is to enact policies that discriminate across individuals *within* birth cohorts rather than make adjustments *across* birth cohorts. For example, if economic conditions worsen in ways that lower the prospects of younger individuals to accumulate wealth through the labour market in comparison with the 'baby-boomer' generation, it may be appropriate to target wealth accumulation where it has occurred. Possibilities here include an increase in wealth taxes or an inheritance tax, perhaps with a reduction in income tax. Though these policies do not refer age explicitly, in practice they are likely to impose a greater burden on the older generation who have accumulated wealth through working during an era of prosperity. Moreover, tax policy can display sensitivity to age, for example by way of an increased income tax for older workers on very high salaries.[26] Again, the proposal we have defended in this paper is compatible with various fiscal reforms of this sort, but it does not commit us to any of them. The main point is that, where one generation enjoys better or worse conditions than the generation before it, it may be best to address these inequalities through laws other than those that explicitly make an individual's age a determinant of her entitlements, as is the case with retirement policies.[27]

[26] Levmore offers some support for the third of these ideas, namely an income tax sensitive to the earnings of older age cohorts (2017: 51-52).

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