

Just a Number

An International Legal Analysis
on Age Discrimination

ANNE-MARIE MOONEY COTTER

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ASHGATE

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Biography

Dr. Anne-Marie Mooney Cotter, Esq. is a Montrealer, fluent in both English and French. She earned her Bachelor's degree from McGill University at age 18, her Juris Doctor law degree from one of the leading civil rights institutions Howard University School of Law, and her Doctorate degree (Ph.D.) from Concordia University, where she specialized in Political Economy International Law, particularly on the issue of equality. Her work experience has been extensive, Chief Advisor and later Administrative Law Judge appointed by the Prime Minister to the Veterans Review and Appeals Tribunal in Canada; Supervising Attorney and later Executive Director for the Legal Services Corporation in the United States; National Director for an environmental network in Canada; Faculty for Business Law at the Law School, Law Society of Ireland; Associate at the law firm of Blake Cassels and Graydon L.L.P. with a secondment as in-house counsel with Agrium Inc. in Canada; Attorney with the Disability Law Center of Alaska; and Solo Practitioner of the Social Security Disability Law Firm. She is also a gold medallist in figure skating. Dr. Cotter is the wife of Mark Badger and the proud mother of Bill and Jill.

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Chapter 1

Introduction to Just a Number

So we come here today to dramatize a shameful condition. In a sense we've come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every (human) was to fall heir. This note was the promise that all ... would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness A check which has come back marked insufficient funds. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so we've come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.¹

In our universal quest for justice in general and age as *Just a Number*, we may learn from the immortal words of one of the greatest civil rights leaders and human rights activists Dr Martin Luther King Jr. This book, *Just a Number*, focuses on the goal of age equality, and the importance of the law and legislation to combat age discrimination. The aim of this book is to better understand the issue of inequality and to improve the likelihood of achieving age equality in the future and ending age inequality. *Just a Number* examines the primary role of legislation, which has an impact on the court process, as well as the primary role of the judicial system, which has an impact on the fight for age equality. This is the fourth book in a series of books on discrimination law. Other titles in the series are *Gender Injustice* dealing with gender discrimination, *Race Matters* dealing with race discrimination, and *This Ability* dealing with disability discrimination. A similar approach and structure is used throughout the series to illustrate comparisons and contradictions in discrimination law.

Fundamental rights are rights which are either inherent in a person by natural law or are instituted in the citizen by the State. The ascending view of the natural law of divine origin over human law involves moral expectations in human beings through a social contract, which includes minimum moral rights of which one may not be deprived by government or society. The competing view is that courts operating under the Constitution can enforce only those guarantees which are expressed. Thus, legislation has an impact on the court system and on society as a whole. Internationally and nationally, attempts have been made to improve the situation of those who are older and outlaw age discrimination through acceptance and accommodation.

In looking at the relationship between *Just a Number* and the law, the book deals comprehensively with the issue of age discrimination throughout its

chapters: Chapter 1 introduces the reader to the core area of age inequality; Chapter 2 covers age inequality in human relations around the world; Chapter 3 looks at the United Nations; Chapters 4 and 5 examine age inequality in Australia and New Zealand, and Africa and South Africa, respectively; Chapters 6 and 7 examine age inequality in Canada, Mexico and the United States, and the North American situation with the North American Free Trade Agreement regarding age discrimination, respectively; Chapters 8 and 9 examine age inequality in the United Kingdom and Ireland, and the European situation with the European Union Treaty regarding age discrimination, respectively; and Chapter 10 concludes this overview of age inequality.

The globalization process and the various economic agreements have a direct impact on people's lives as key players in the labor market today. This study seeks to comparatively analyze legislation impacting age equality in various countries internationally. It also examines the two most important trade agreements of our day, namely the North American Free Trade Agreement and the European Union Treaty in a historical and compelling analysis of equality. Although an important trade agreement with implications for labor, the North American Free Trade Agreement has a different system from the European system in that it has no overseeing court with jurisdiction over the respective countries. Further, the provisions for non-discrimination in the labor process are contained in a separate document, the North American Agreement on Labor Cooperation. On the other hand, the European Union Treaty takes a different approach, by directly providing for non-discrimination, as well as an overseeing court, the European Court of Justice, and the treaty is made part of the domestic law of every Member State, weakening past discriminatory laws and judgments. Further, the European process actively implements age equality by way of European Union legislation.

North America, as the new world with its image of freedom and equality, is considered to have made great strides in civil rights. However, the American philosophy of survival of the fittest, the pursuit of materialism and the search for the fountain of youth have slowed down the process. With the advent of the European Union, the coming together of nations has had a very positive influence on the enforcement of human rights, much more so than that of North America, because of the unique European approach.

All parties must cooperate, and governments need to work with businesses, trade unions and society as a whole, so together they can create an environment where all humans can participate at all levels of political life and decision-making. Indeed, combating age inequality and achieving age equality requires a strong 'Just a Number' focus on age in constitutional, legal, judicial and electoral frameworks for all humans to be actively involved at the national and international levels.

According to liberal democracy, the rule of law is the foundation stone for the conduct of institutions. *Just a Number* offers a defence of the notion that social reform is possible and plausible through key institutions, which include the legal system and its use of the law. For liberal democracy, the legislative system is the core for the governance of society in the way it functions toward social equality of opportunity. It is clear that if we initially reform our legislation and our laws and,

in the end; our way of thinking, then there will be a change in the institutions of society and their functioning, which will be a major step forward in societal reform.

The law is of central importance in the debate for change from age inequality to age equality. Actionable and enforceable rights are legal norms, which represent social facts demarcating areas of action linked with universalized freedom.² Law is a powerful tool, which can and must be used to better society. Associated with command, duty and sanction, and emanating from a determined source, law is a rule of conduct enforced by sanctions, and administered by a determinate locus of power concentrated in a sovereign or a surrogate, the court. Therefore, the justice system and the courts play a vital role in enforcing the law.

Legitimacy has subjective guarantees of internalization with the acceptance and belief in authority, and objective guarantees of enforcement with the expectation of reactions to the behavior.³ Therefore, law must recognize equally all members of society, including those who are older, in order for it to be effective. Further, in order for a law to be seen as legitimate from society's point of view and accepted by the people, in general to be followed, a process of inclusive interaction by all affected must first be realized. When creating laws, this means that input from various groups, including all humans and especially those who are older with skills and experience, is critical.

Thus, laws have two components, namely: facts, which stabilize expectations and sustain the order of freedom; and norms, which provide a claim of approval by everyone. Law makes possible highly artificial communities whose integration is based simultaneously on the threat of internal sanctions and the supposition of a rationally motivated agreement.⁴ Age discrimination and injustice can be undercut through the effective use of both the law and the courts.

The facticity of the enforcement of law is intertwined with the legitimacy of a genesis of law that claims to be rational, because it guarantees liberty. Laws can go a long way in forbidding inequality and providing for equality; where one ends the other begins. There are two ranks of law, namely ordinary law of legislation, administration and adjudication, and higher constitutional law affecting rights and liberties, which government must respect and protect. The latter encompasses the constitutions of the various nations as interpreted by the supreme courts. Law holds its legitimacy and validity by virtue of its coercive potential, its rational claim of acceptance as right. It is procedurally constructed to claim agreement by all citizens in a discursive process purported to be open to all equally for legitimacy with a presumption of fair results. The legitimate legal order is found in its reflexive process. Therefore, we must all believe that equality is a good and necessary thing, which is essential to the very growth of society and to the ending of age discrimination.

Thus, conflict resolution is a process of reasoned agreement where, firstly, members assume the same meanings by the same words; secondly, members are rationally accountable for their actions; and thirdly, mutually acceptable resolutions can be reached so that supporting arguments justify the confidence in the notion that the truth in justice will not be proven false.⁵ Disenchantment with the law and the legal process only serves to undermine the stabilization of

communities. By legitimizing the legal process and holding up the ideals of equality in the fight against age discrimination, the law and the courts can bring about change.

All humans have had to fight in the formulation of laws and in the enforcement of equality in the courts. Age, like class, rests on economic determination and historical change. Inequality in the distribution of private property among different classes of people has been a characteristic of society. The ruling class loathes that which it is not, that which is foreign to it, and this has traditionally been those who are older. The patriarchal system has freely fashioned laws and adjusted society to suit those in power, and this has traditionally been young white Anglo-Saxon Protestant men.

Relationships, opportunities, attributes and preconceived notions are socially constructed and are learned through socialization processes. They are context and time-specific but changeable, since the physical and the mental determine what is expected, allowed and valued in a given situation. In most societies, there are differences and inequalities between humans in the decision-making opportunities, assignment of responsibilities, undertaking of activities, and access to and control over resources with age part of the broader sociocultural context. There are important criteria for analysis, including age, race, gender, poverty and class, and hence all these can, alone or combined, amount to discrimination.

The concept of equality is the ignoring of difference between individuals for a particular purpose in a particular context, or the deliberate indifference to specified differences in the acknowledgement of the existence of difference. It is important to note that assimilation is not equality. The notion of rights and of equality should be bound to the notion of justice and fairness. Legal freedom and rights must be seen as relationships not possessions, as doing, not having. While injustice involves a constraint of freedom and a violation of human dignity through a process of oppression and domination, justice involves the institutional conditions necessary for the development and exercise of individual capacities for collective communication and cooperation.⁶ Discrimination is the withholding from the oppressed and subordinated what enables them to exercise private and public autonomy. The struggle must be continued to bring about psychological, sociological and institutional changes to allow all members of the human race including the aged to feel equal and to recognize all ages, the young and the old alike, one another as being so. Solidarity and cooperation are required for universal and global equality.

Though humans are mortal and civilizations come and go, from Biblical times to our days, there has been a fixed pivot for the thoughts of all generations and for humans of all continents, namely the equal dignity inherent in the human personality.⁷ Even Pope John XXIII described the United Nations Declaration of Human Rights in his 1963 Encyclical *Pacem in Terris*, as 'one of the most important acts of the United Nations' and as 'a step towards the politico-judicial organization of the world community'; 'In social life, every right conferred on man by nature creates in others (individuals and collectivities) a duty, that of recognizing and respecting that right'.⁸ Further, Pope John Paul II described the

importance of work and of just remuneration in his 1981 Encyclical *Laborem Exercens*:

Work bears a particular mark of ... humanity, the mark of a person operating within a community of persons While work, in all its many senses, is an obligation, that is to say a duty, it is also a source of rights on the part of the worker. These rights must be examined in the broad context of human rights as a whole, which are connatural with man, and many of which are proclaimed by various international organisations and increasingly guaranteed by the individual States for their citizens. Respect for this broad range of human rights constitutes the fundamental condition for peace in the modern world: peace both within individual countries and societies and in international relations The human rights that flow from work are part of the broader context of those fundamental rights of the person The key problem of social ethic...is that of just remuneration for work done Hence, in every case, a just wage is the concrete means of verifying the justice of the whole socio-economic system and, in any case, of checking that it is functioning justly.⁹

An improvement in equality of opportunity is sought for all rather than a utopian state of equality. No one should misunderstand this. Clearly, oppression exists. Rather, *Just a Number* seeks to add to the list of inequalities to be considered, and does not rule out other forms of injustices besides age inequality. Generalities are not presumed nor are they made here, for this would detract from the very purpose of this book, to bring to the forefront of discussion the reality of injustice, not to create further injustice, in the pursuit of *Just a Number*.

Notes

- ¹ King Jr., Dr. Martin Luther, *March on Washington*, 1963.
- ² Habermas, Jurgen, *Between Facts and Norms*, 1998, p.xii.
- ³ Fried, Morton, *The Evolution of Political Society*, 1967, p.23.
- ⁴ Habermas, Jurgen, *Between Facts and Norms*, 1998, p.8.
- ⁵ *Ibid.*, at p.xv.
- ⁶ Habermas, Jurgen, *Between Facts and Norms*, 1998, p.419.
- ⁷ Cassin, René, *From the Ten Commandments to the Rights of Man*, France, 1969.
- ⁸ Pope John XXIII, *Pacem in Terris*, Rome, 1963.
- ⁹ Pope John Paul II, *Laborem Exercens*, Rome, 1981.

References

- Cassin, René (1969), *From the Ten Commandments to the Rights of Man*, France.
 Fried, Morton (1967), *The Evolution of Political Society*, Random House, New York.
 Habermas, Jurgen (1998), *Between Facts and Norms*, MIT Press, Massachusetts.
 King Jr., Dr. Martin Luther (1963), *March on Washington*.
 Pope John XXIII (1963), *Pacem in Terris*, Rome.
 Pope John Paul II (1981), *Laborem Exercens*, Rome.

Chapter 2

Just a Number in Age Discrimination

Introduction

In the quest for age as *Just a Number*, this chapter will examine age discrimination and ageism generally. All human, civil, cultural, economic, political and social rights, including the right to development, are universal, indivisible, interdependent and interrelated. Governments and others must not only refrain from violating human rights, but must work actively to promote and protect these rights. Human rights issues of discrimination continue to mar progress towards empowerment where those who are older continue to be stereotyped and discriminated against, face systemic barriers and prejudice that prevent them from accessing the opportunities created for the achievement of equality.

Just a Number

Population ageing is one of humanity's greatest triumphs, and it is also one of our greatest challenges.¹ As we enter the 21st century, global ageing will put increased economic and social demands on all countries. At the same time, older people are a precious, often ignored, resource making an important contribution to the fabric of our societies. Ageing is a privilege and a societal achievement. It is also a challenge, which will impact on all aspects of 21st century society, and cannot be addressed by the public or private sectors in isolation, requiring joint approaches and strategies. In the Developed world, the very old, age 80+, is the fastest growing population group. Women outlive men in virtually all societies; consequently in very old age, the ratio of women to men is 2:1. Today, world-wide, there are around 600 million people aged 60 years and over; this total will double by 2025 and will reach virtually two billion by 2050, the vast majority of them in the Developing world. In our fast ageing world, older people will increasingly play a critical role through volunteer work, transmitting experience and knowledge, helping their families with caring responsibilities and increasing their participation in the paid labour force, making major contributions to society.

In terms of the demographic revolution worldwide, the proportion of people age 60 and over is growing faster than any other age group. Between 1970 and 2025, a growth in older people of some 694 million or 223 per cent is expected. In 2025, there will be a total of about 1.2 billion, and by 2050, there will be 2 billion people over the age of 60, with 80 per cent of them living in Developing countries. Age composition, that is the proportionate number of children, young adults, middle-aged adults and older adults in any given country, is

an important element for policymakers to take into account. Population ageing refers to a decline in the proportion of children and young people, and an increase in the proportion of people age 60 and over. As populations age, the triangular population pyramid of 2002 will be replaced with a more cylinder-like structure in 2025. Decreasing fertility rates and increasing longevity will ensure the continued 'greying' of the world's population, despite setbacks in life expectancy in some African countries due to AIDS, and in some newly independent States due to increased deaths caused by cardiovascular disease and violence. Sharp decreases in fertility rates are being observed throughout the world, and it is estimated that by 2025, 120 countries will have reached total fertility rates below the replacement level, with the average fertility rate of 2.1 children per woman; this is a substantial increase compared to 1975, when just 22 countries had a total fertility rate below or equal to the replacement level. The current figure is 70 countries.

Until now, population ageing has been mostly associated with the more Developed regions of the world. Currently nine of the ten countries with more than ten million inhabitants and the largest proportion of older people are in Europe. Already, most older people, around 70 per cent, live in Developing countries. These numbers will continue to rise at a rapid pace. In all countries, especially in Developed ones, the older population itself is also ageing. People over the age of 80 currently number 69 million, the majority of whom live in more Developed regions. Although people over the age of 80 make up about one per cent of the world's population and three per cent of the population in Developed regions, this age group is the fastest growing segment of the older population.

In both Developed and Developing countries, the ageing of the population raises concerns about whether or not a shrinking labour force will be able to support that part of the population who are commonly believed to be dependent on others, that is children and older people. However, most of the older people in all countries continue to be a vital resource to their families and communities. Many continue to work in both the formal and informal labour sectors. At the same time, active ageing policies and programmes are needed to enable people to continue to work according to their capacities and preferences as they grow older, and to prevent or delay disabilities and chronic diseases that are costly to individuals, families and the health care system. As for rising population ageing in Developing countries, in 2002, almost 400 million people aged 60 and over lived in the Developing world. By 2025, this will have increased to approximately 840 million representing 70 per cent of all older people worldwide. In terms of regions, over half of the world's older people live in Asia, and its share of the world's oldest people will continue to increase the most, while Europe's share as a proportion of the global older population will decrease the most over the next two decades. Compared to the Developed world, socioeconomic development in Developing countries has often not kept pace with the rapid speed of population ageing. In most of the Developed world, population ageing has been a gradual process following steady socio-economic growth over several decades and generations. However, in Developing countries, the process is being compressed into two or three decades. Thus, while Developed countries grew affluent before they became old, Developing countries are getting old before a substantial increase in wealth

occurs. Rapid ageing in Developing countries is accompanied by dramatic changes in family structures and roles, as well as in labour patterns and migration. Urbanization, the migration of young people to cities in search of jobs, smaller families and more women entering the formal workforce mean that fewer people are available to care for older people when they need assistance.²

The word discrimination comes from the Latin 'discriminare', which means to 'distinguish between'. Discrimination is more than distinction, it is action based on prejudice resulting in unfair treatment of people. Social theories of egalitarianism claim that social equality regardless of age should prevail. Unlawful discrimination can be characterized as direct or indirect. Direct discrimination involves treating someone less favourably because of the possession of a prohibited attribute, such as age, than they would treat someone without the prohibited attribute who was in the same circumstances. Indirect discrimination involves setting a condition or requirement that a smaller proportion of those with the prohibited attribute can comply with than those who do not have the prohibited attribute without reasonable justification. Age discrimination affects recruitment, continued vocational training and lifelong learning, promotion and exit from employment. Older workers may appear to be 'more expensive' but are more likely to stay with the same employer, whereas younger workers may change employers after receiving training. Age discrimination in employment may differ somewhat from race and gender discrimination, in that it does not usually take the form of wage discrimination. Older workers, on average, make more than younger workers do. Firms may be afraid to offer older workers lower wages than younger workers, and instead, they will simply not promote or not hire an older worker. They may also encourage early retirement or layoff disproportionately older more experienced workers.

There is considerable ambiguity in the general literature on age discrimination about whether anti-discrimination law is primarily intended to protect people whose work performance 'productivity' is not limited or only trivially limited, by their condition, or whether people who are substantially limited in what they can do are also seen as potential beneficiaries of the law.³ This ambiguity reflects different conceptions of equality. There are two broad conceptions: equality of opportunity and equality of results. Equality of opportunity is oriented towards individual merit, in the sense that it aims for equality in the opportunities of individuals to work and be paid in accordance with their abilities. This conception is most relevant to older people whose productivity is unimpaired and whose opportunities are currently limited by stigma and stereotyping. By contrast, a conception oriented to equality of results, envisaging elements of redistribution and positive action, would appear to offer more to those who have substantial limitations.

Within the equal opportunities/individual merit approach can be found a spectrum of tests for discrimination. At one end of the spectrum, there is the 'equality as mere rationality', where arbitrary and unreasonable behaviour is deemed discriminatory, but justifications for discrimination are accepted at face value. At the other end of the spectrum, there is the 'equality as fairness', where justifications are examined critically, the possibility of indirect discrimination is

recognised, and burdens of proof may be shifted. There is a third conception of equality that goes beyond the individual merit approach but avoids the explicitly redistributive language of equality of results, the 'radical equality of opportunity', which argues for institutional and structural changes to remove the barriers to equal participation of older people. It involves the creation of positive duties on employers to promote equality, by reviewing employment practices and workplace organization.

Building age rights on the existing corpus of employee rights has the important limitation that the rights created are confined to those in employment. One purpose of a definition of age is to establish a standard for specifying who has rights under antidiscrimination legislation, which is common to both existing and prospective employees, and avoids setting different standards for 'insiders' and 'outsiders'. This is a laudable ideal, but it comes up against a very basic problem about the fair allocation of costs across employers. The difficulty for a job-seeker is that no employer has any particular or special duty towards him relative to other employees.⁴

Prejudice is, as the name implies, the process of pre-judging something. In general, it implies coming to a judgment on the subject before learning where the preponderance of the evidence actually lies, or formation of a judgment without direct experience. When applied to social groups, prejudice generally refers to existing biases toward the members of such groups, such as older people, often based on social stereotypes, and at its most extreme, denying groups benefits and rights unjustly or, conversely, unfairly showing unwarranted favor towards others. It may be a matter of early education; those taught that certain attitudes are the correct ones may form opinions without weighing the evidence on both sides of a given question. Many prejudicial behaviors are picked up at a young age by children emulating their elders' way of thinking and speaking, with no malice intended on the child's part. Overall, prejudice has been termed an adaptive behavior by sociologists.

Discrimination is to make a distinction. Commonplace forms of invidious discrimination include distinctions by age, race, skin color, ethnicity, nationality, gender, marital status, religion, and socio-economic class. Invidious discrimination classifies people into different groups in which group members receive distinct and typically unequal treatments and rights without rational justification. Expectations and obligations of group members are also biased by invidious discrimination. If the justification is rational, then the discrimination is not invidious. By virtue of establishing nationalism, as opposed to globalism, every government has formalized and supported discrimination. However, many governments have attempted to control discrimination through civil rights legislation, equal opportunity laws and institutionalized policies of affirmative action.

Affirmative action or positive discrimination is a policy or a program providing access to systems for people of a minority group, such as older people, who have traditionally been discriminated against, with the aim of creating a more egalitarian society. This consists of access to education, employment, health care or social welfare. The terms affirmative action and positive discrimination originate in law, where it is common for lawyers to speak of affirmative or positive

remedies that command the wrongdoer to do something. In contrast, negative remedies command the wrongdoer to not do something or to stop doing something. In employment, affirmative action may also be known as employment equity or preferential hiring. Affirmative action requires that institutions increase hiring and promotion of candidates of mandated groups. It originally began as a government remedy for past government and social injustices, and exists to change the distribution of such things as jobs, education or wealth based on certain characteristics.

Supporters of affirmative action argue that affirmative action policies counteract a systemic discrimination by providing a balancing force. A certain group may be less proportionately represented in an area, often employment or education, due, in the view of proponents, to past or ongoing discrimination against members of the group. The theory is that a simple adoption of meritocratic principles along the lines of age-blindness would not suffice to change the situation: regardless of overt principles, people already in positions of power are likely to hire people they know, and people from similar backgrounds; also, ostensible measures of merit might well be biased toward the same groups who were already empowered. In such a circumstance, proponents believe government action giving members of the group preferential treatment is necessary in order to achieve a proportionate distribution. A written affirmative action plan must include goals and timetables for achieving full utilization of those who are older, in quotas based on an analysis of the current workforce compared to the availability in the general labor pool of those who are older. Supporters of affirmative action argue that it benefits society as a whole; given that affirmative action is effective, since creating a diverse culture increases the quality of the society.

From its outset, affirmative action was seen as a transitional strategy, with the intent that in a period, variously estimated from a generation to a century, the effects of past discrimination would be sufficiently countered that such a strategy would no longer be necessary: the power elite would reflect the demographics of society at large. Opponents of affirmative action regard it as demeaning to members of disadvantaged groups, in that affirmative action wrongly sends a condescending message that they are not capable enough to be considered on their own merits. Critics often object to the use of quotas in affirmative action. There is dispute over whether this *de jure* illegality prevents *de facto* quotas, and attempts have been made to show that these goals are not quotas. However, some believe eradicating affirmative action will further deepen economic disparity between groups.

Free market libertarians believe any form of unjustified discrimination is likely to lead to inefficiencies, and that a rational person would therefore be unlikely to seek to discriminate one way or another and should therefore be free to decide who to select. Therefore, libertarians generally do not advocate anti-discrimination laws, as they reportedly distort the situation. They believe that inefficient, overregulated, non-competitive industries enable unjustified discrimination, as said industries need not compete and hire on credentials relevant to the job. In terms of policy, libertarians favor repealing all affirmative action legislation and regulation, so that the government has no official stance on the

practice, leaving the decision to uphold and maintain such a policy up to the individual institutions.

Overall, equal opportunity refers to the idea that all people should start out in life from the same platform, in that all should have equal opportunities in life, regardless of where they were born or who their parents were. Egalitarianism is the moral doctrine that equality ought to prevail throughout society, and according to legal egalitarianism, everyone ought to be considered equal under the law.

Pulitzer Prize winning author Robert Butler had coined the term ageism in 1968 to refer to the bigotry against old people.⁵ 'Ageism allows the younger generations to see older people as different than themselves; thus they subtly cease to identify with their elders as human beings'. Ageism is bias against a certain individual or group on the grounds of age. When that bias is the primary motivation behind acts of discrimination against that person or group, then those acts amount to age discrimination. Age discrimination takes positive and negative forms, with negative ageism being the more frequently encountered. Although ignorance about older people is a root source of ageism, ageism implies an evaluative connotation.⁶ Impressions of age alone can contribute to a negative evaluation. Interestingly, legislation itself can convey ageism, more often because of benign neglect or indifference than active antagonism, since existing misperceptions about the elderly are used to influence legislative processes treating older people as a homogeneous population.⁷ In contrast to a previous era involving models that attempted to map the dimensions of age deterioration through the methodology of cross-sectional design, successful aging shows similarities with health promotion and illness prevention paradigms that emphasize the identification of factors that promote autonomy and quality of life.

Overall, those with more knowledge about aging tend to have less negative and more neutral attitudes.⁸ Misperceptions about the elderly abound in the young. Ignorance contributes to prejudice, and ageism does affect the rights and treatment of older people, and ultimately their quality of life. Education is at the root of how to eradicate the quiet epidemic of ageism that is with us still. Ageism is a social attitude. It is a way of looking at older people that stereotypes them. It is also part of attitudes where people believe that older adults can be treated in demeaning ways. Many people note that as they grow older and as they reach certain age milestones, age 65 being one of them, others begin to treat them differently, which means being treated as less valued and less capable. Ageism is also reflected when younger persons implicitly or explicitly act as if they are more entitled to family or social resources than older adults are. Older people are often stereotyped as weak, frail and disabled, or positively stereotyped as wise or caring. But both types of stereotypes are damaging, since the wide range of attitudes prevent people from accurately assessing and responding to social problems and conditions of older adults. Ageism can be reflected in discriminatory practices in housing, employment and services of all kinds.

Ageism is a tendency to structure society based on an assumption that everyone is young, thereby failing to respond appropriately to the real needs of older persons. Negative attitudes towards older persons stem from myths about