Legal Issues with Aging, and Human Rights

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Before Opening

• About myself:
  - who am I?
  - Why elder law?
  - Why am I here?
  - My personal thanks:

• About this presentation:
  - Entering the USA....
  - Introduction + “What”
  - 2 Stories + “So & Now What”
  - Conclusion + “Then What”
University of Haifa

Introduction
Question 1: Who is this?

- Clue?..
- This is: GERAS
- One of the bad spirits made by the goddess of night - NYX (who was the opposite of the goddess of youth HEBE)
- How is he characterized?
- What do we know on the social construction of old age in Ancient Greece?
Question 2: Who is this?

- Clue?
- This is Ilya Ilyich Mechnikov;
- Russian Jewish biologist; Nobel Prize recipient of 1908 for his work in immunology;
- He coined the term “gerontology” 1903 after focusing his research on longevity;
Question 3: Who is This?

- Clue 1: She is local
- Clue 2: Graduate of UoN-L + won the Pulitzer Prize 1923
- Willa Sibert Cather
Question 4: Who is This?

- Prof. Robert Neil Butler
- "Why Survive? Being Old in America" (Pulitzer Prize 1976)
- What did Prof. Butler's writings represent?
Question 5: Who is This?

- Clue? Un + Aging
- Ms. Rosa Kornfeld-Matte
- The first UN HR Council Independent Expert on the enjoyment of all human rights by older persons
What ! What is the issue?

How and why did we move from:
- Aging as a negative social construct,
- Aging as a medical pathology,
- Aging and social invisibility,
- Aging as a social problem
- And...
Story No. 1: What is the issue?
The Demographic Story
“Talking about a revolution...”

Figure 2-1.
Young Children and Older People as a Percentage of Global Population: 1950 to 2050

Source: United Nations Department of Economic and Social Affairs, 2007b.

Source: Global Ageing 2008
Fertility v. Longevity

Figure 1. Total fertility rate and life expectancy at birth: world, 1950-2050
A Brave New World...

Source: Global Ageing 2008
A Brave New "Healthier" World?

Figure 5-3.
Chronic Disability Decline in the United States: 1982 to 2005
(Percents of older people in each category)

<table>
<thead>
<tr>
<th>Year</th>
<th>Nondisabled</th>
<th>3+ ADL¹</th>
<th>1–2 ADL²</th>
<th>IADL only³</th>
<th>Institution⁴</th>
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<tr>
<td>1982</td>
<td>73.3</td>
<td>6.4</td>
<td>6.8</td>
<td>5.7</td>
<td>7.5</td>
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<tr>
<td>1984</td>
<td>73.8</td>
<td>6.3</td>
<td>6.9</td>
<td>6.0</td>
<td>7.0</td>
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<tr>
<td>1989</td>
<td>75.2</td>
<td>6.8</td>
<td>6.6</td>
<td>4.5</td>
<td>6.9</td>
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<tr>
<td>1994</td>
<td>76.8</td>
<td>6.3</td>
<td>6.1</td>
<td>4.4</td>
<td>6.3</td>
</tr>
<tr>
<td>1999</td>
<td>78.8</td>
<td>6.7</td>
<td>6.3</td>
<td>3.3</td>
<td>4.9</td>
</tr>
<tr>
<td>2004/05</td>
<td>81.0</td>
<td>7.0</td>
<td>5.6</td>
<td>2.4</td>
<td>4.0</td>
</tr>
</tbody>
</table>

Source: Global Ageing 2008
Or a Brave New Lonelier World?

Caregiver Support Ratio

In **2010**, the caregiver support ratio was **more than 7 potential caregivers** for every person in the high-risk years of 80-plus.

In **2030**, the ratio is projected to decline sharply to **4 to 1**; and it is expected to further fall to less than **3 to 1** in **2050**.
Before leaving Part 1:
A Visualization of the Aging Story
Story No. 2: But so what? The Social Justice Story
So what? What if the World is Aging?
Aging and Social Justice

• The “classical” political discussion around “social justice”: distribution
• The “alternative” political discussion around “social justice”: recognition
The distinction between “different” kinds of injustice

Prof. Fraser distinguishes between two different kinds of social injustices:

The first is the “Socio-Economic” injustice

Examples are:

- **Exploitation** (having the fruits of one’s labour appropriated for the benefit of others).
- **Marginalisation** (being confined to undesirable or poorly paid work or being denied access to income-generating labour altogether).
- **Deprivation** (being denied an adequate material standard of living).
The second type of injustice is cultural or symbolic. Here injustice is rooted in social patterns of representation, interpretation, and communication. Examples include:

- **Cultural domination** (being subjected to patterns of interpretation and communication that are associated with another culture and are alien and/or hostile to one’s own);
- **Nonrecognition** (being rendered invisible by means of the authoritative representational, communicative, and interpretative practices of one’s culture);
- **Humiliation & Disrespect** (being routinely maligned or disparaged in stereotypic public cultural representations and/or in everyday life interactions).
2: The Different Kinds of Social Collectivities

- Prof. Fraser now moves from the injustice spectrum to the social collectivities spectrum.
- On the socio-economic injustice side one can find “Exploited Collectives”.
  - The classic example: The Working Class
  - The body of persons in a capitalist society who must sell their labour power under arrangements that authorise the capitalist class to appropriate surplus productivity for its private benefit.
As opposed to "exploited collectivities" there are "Despised Collectives".

The sources of this status stems not from economic distribution, but rather from cultural misrecognition.

- Example: Homosexuals. Their mode of collectivity is that of a despised sexuality, rooted in the cultural-valuational structure of society. From this perspective, the injustice they suffer is quintessentially a matter of recognition.
While some groups are “exploited” and other are “despised” some social groups are subject to both kinds of injustice. They are the “Bivalent Collectivities”.

They are differentiated as collectivities by virtue of both the political-economic structure and the cultural-valuational structure of society.

Examples: Gender

- Gender structures the fundamental division between paid “productive” labour and unpaid “reproductive” and domestic labour, assigning women primary responsibility for the latter.

- A major feature of gender injustice is androcentrism: the authoritative construction of norms that privilege traits associated with masculinity.
3: The Question of “Remedy”

• Prof. Fraser moves now and distinguishes between two broad approaches to remedying injustice that cut across the redistribution-recognition divide.

• **Affirmation:**
  – Affirmative remedies for injustice mean remedies aimed at correcting inequitable outcomes of social arrangements without disturbing the underlying framework that generates them.

• **Transformation:**
  – Transformative remedies, in contrast, mean
## The Model: Combining Conceptual Injustices with Conceptual Remedies

<table>
<thead>
<tr>
<th>Affirmation</th>
<th>Transformation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The liberal welfare state</strong></td>
<td><strong>Socialism</strong></td>
<td><strong>Distribution</strong></td>
</tr>
<tr>
<td>surface reallocations of existing goods to existing groups; supports group differentiation; can generate misrecognition</td>
<td>deep restructuring of relations of production; blurs group differentiation; can help remedy some forms of misrecognition</td>
<td></td>
</tr>
<tr>
<td><strong>Mainstream multiculturalism</strong></td>
<td><strong>Deconstruction</strong></td>
<td><strong>Recognition</strong></td>
</tr>
<tr>
<td>surface reallocations of respect to existing identities of existing groups; supports group differentiations</td>
<td>deep restructuring of relations of recognition; destabilises group differentiation</td>
<td></td>
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</tbody>
</table>
So What? Applying Fraser’s Model on Older Persons

• Are older persons subject to socio economic injustice?

• I would argue: Yes.
  – Currently, over half of older people worldwide - 342 million - lack income security and, unless action is taken to improve the situation, it is estimated that, by 2050, more than 1.2 billion older people will be without access to secure incomes (UNDESA, 2007).
Figure 1
More than 7 million people ages 65 and older had incomes below poverty in 2017, based on the Supplemental Poverty Measure, 2.5 million more than under the official poverty measure.

- Below 100% of poverty
- 100%-199% of poverty
- 200%+ of poverty

Official Poverty Measure
- 35.7 million (69.9%)
- 10.7 million (21.0%)
- 4.7 million (9.2%)

Supplemental Poverty Measure
- 29.6 million (58.0%)
- 14.2 million (27.9%)
- 7.2 million (14.1%)

Total Number of People Ages 65 and Older, 2017: 51.1 million

Do older persons suffer from recognition injustice?

• Are older persons subject to cultural or symbolic injustice?

Once again, I would argue: Yes.

– Ageism can be seen as a process of systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this for skin color and gender. Old people are categorized as senile, rigid in thought and manner, old-fashioned in morality and skills [...] Ageism allows the younger generations to see older people as different from themselves, thus they subtly cease to
Understanding that being “old” is a “social construction”
The centrality of Ageism: The Cultural and Symbolic Recognition Injustice

- Ageism – the humiliation of the “elder identity” – is the key element of any future development of human and legal rights to older persons:
  - It is unique to older persons;
  - It is universal and exists in all societies;
  - It is manifested in all fields of life;
  - It is rooted in culture;
  - It is internalized by older persons (self-ageism);
  - It will not “vanish” by itself.
- It is complex and ambivalent: both positive and
The Consequences of Ageism – Empirical Evidence:

- **Health services**
  - Medical treatments

- **Social Services**
  - Guardianship

- **Economy**
  - Invisibility of contribution

- **Intergenerational relationships**
  - “Burden” on adult children

- **The arts**
  - Ageist advertisements/movies

- ....everywhere....
Back to the “so what”...

• It is clear in my view, that in current modern society, older persons are a “bivalent group”:

• They are subject to re-distributional injustice;

• But even more importantly, they
Story No. 3: **Now What?**
The Elder Guardianship Example