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W G HART LEGAL WORKSHOP 1990

DISCRIMINATION AND LAW

Ageism and Legal Control

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AGEISM AND LEGAL CONTROL (Summary)

The aim of this paper is to outline some thoughts concerning the concept of 'ageism'; how it may be distinguished from 'sexism' and 'racism'; and the implications of these distinctions for the form of legal and other controls that may be thought appropriate in the age context.

A. THE SOCIAL PHENOMENON OF AGEISM

The term 'ageism' appears to have been coined by R.N. Butler, the American psychologist (Butler 1969). It refers to the prejudice applied to someone on age grounds, usually involving unwarranted stereotypes of older persons.

There exists a growing literature concerned with the myths and realities of growing old and the abilities of older persons (Hendricks and Hendricks 1981). As with sexism and racism, one can identify a number of age stereotypes. Such stereotypes have been increasingly challenged by the findings of gerontologists, and by older persons themselves. Ageist language can also be identified.

The public perception of older people can be seen as largely a product of a complicated process of social construction (Phillipson 1982). The critical question is why and how has such social construction occurred? A number of theories have been advocated to explain the status of older persons in society.

- i. 'Modernisation' thesis, (Cowgill and Holmes 1972)
- ii. 'Industrialisation' thesis - focus on older person's role in the labour market.
- iii. Political dimensions - compare strength of the 'Gray Lobby' in United States with activism of Pensioners' association in U.K.

B. AGEISM, SEXISM, RACISM

There appears to be some similarity between all three concepts. All identify a distinct social process leading to the categorisation of a significant group of people where the empirical evidence suggests these groups are discriminated against in various ways.

There are some interesting relationships between all three concepts:

- i. Ageism and sexism - the 'double jeopardy' argument (Sontag 1975), (Itzin 1984).
- ii. Ageism and racism - studies of older persons in particular ethnic groups - 'triple jeopardy' (Bengtson 1979).
- iii. Sexism and racism - (dealt with elsewhere in the Workshop).

However, it is argued that there is greater merit in exploring the *differences* between ageism, on the one hand, and sexism and racism, on the other. At present, in the U.K., women and

men of all ethnic groups have reasonable expectations of becoming older/elderly persons. Unlike race and sex, becoming old is a condition obviously achieved over a long period of time. Gender and race are (relatively) immutable conditions. It has been held in the U.S. Supreme Court that older people as a group, do not have a comparable 'history of oppression' to women and blacks, (see Massachusetts Board of Retirement v Murgia 427 U.S. 307), (Buck and Fitzpatrick 1986).

There have been a few attempts to isolate and compare ageism, sexism and racism, e.g. by using an 'equality index' (Palmore and Manton 1973). Some of the evidence would suggest that ageism is not as powerful an analytical concept as the other two '-isms' (Hendricks and Hendricks 1981), although there have been difficulties in obtaining reliable research evidence in this area.

One conclusion from the research evidence is that age categories operate more *covertly* than sex or race categories. Much of the evidence relating to job advertisements reveals that maximum age limits are in practice operated in a flexible manner by employers (Buck 1988). Such evidence might suggest that, all other things being equal, age acts as a *marginal* discriminatory factor.

It can be argued that there is a more appropriate connection between discrimination applied against older persons and that experienced by disabled/sick persons. Sometimes being disabled is an immutable condition, but most people can reasonably expect to experience sickness and invalidity to some degree. Arguably, there is a similar process of social construction of such patient/invalid roles as occurs in the age context. Like older people, disabled people are generally showing signs of increased activism.

C. AGE DISCRIMINATION LAWS

The best known example: Age Discrimination in Employment Act 1967 in the United States. This measure has generated a developed case law based on the 'civil rights' model of discrimination law (see Derrick Bell's paper). But, given the doubts in relation to the analytical potency of the concept of ageism, is such a model the appropriate one? (Schuck 1979). (Is it, in any case appropriate in the UK context?).

Alternative legislative models - 'quota model' - Disabled Persons (Employment) Act 1944.

Given the *covert* nature of discrimination law, it is argued that some aspects of discrimination law may have particular application in the age context (Buck 1988):

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* recommended reading.

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Trevor Buck (Biographical details)

Read for a degree in Politics, History and Philosophy in 1970-73 at the University of Lancaster.

Worked as a bus driver for two years and then as a community worker for several years before doing a law degree at Preston Polytechnic as a mature student (1980-1983) and then a research LLM thesis at the University of Lancaster.

Full-time research assistant in the Law Dept at Lancaster University 1984-5

Lecturer and then Senior Lecturer in law at Lancashire Polytechnic 1985-1989.

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Publications in areas of education, social security and family law.