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## Cross-National Perspectives on Age Discrimination



## Cross-National Perspectives on Age Discrimination

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Recent decades have seen increasing attention to widespread social and economic discriminatory practices directed against older people. Negative age-based attitudes have long existed, some casting older individuals as unproductive and unattractive, others finding them collectively selfish and taking advantage of the productive efforts of younger people. That one population can be associated with such a range of negative opinion speaks to a critical underlying factor, namely, that the needs, interests, and abilities of older people are as wide-ranging as those of younger people.

This issue of PP&AR explores how discriminatory behaviors manifest themselves, steps that are being taken to address those behaviors, and the dilemmas associated with asserting elders' individual rights while acknowledging vulnerabilities that are inevitably—although variably—associated with advanced chronological age. In particular, authors here ask if age discrimination is ever acceptable and whom might such discrimination advantage. In striving to end what at first blush must seem unacceptable, does public policy encounter unexpected and perhaps unwanted consequences?

These questions are of growing importance across a range of nations, and we are fortunate that the contributors to this issue bring the experience of both the United States and the United Kingdom, as well as of the European Union, to bear on them. Indeed, this issue is a cross-national cooperative venture between The Gerontological Society of America and Age UK, the principal advocacy, policy, and research organization working on behalf of elders in Britain. The comparative perspective allows our authors to illuminate the issues, dilemmas, and options that face policymakers as they seek to eliminate negative discriminatory behaviors. Yet, the authors wrestle as well with how to identify and preserve age-biased provisions and practices that bring legitimate and needed benefits to older people.

The opening article by Dominic Abrams and Hannah Swift identifies the problem in question as one of ageism, that is “the stereotyping of, and discrimination against, people based on their age.” The authors speak to the range of stereotypes that form the basis of prejudice against older people. In particular they address a paradox they see associated with “paternalistic prejudice,” namely, how people can have a positive image of a group and still discriminate against it. Abrams and Swift suggest that two dimensions are at work here—warmth and competence—and older people score well on the first but poorly on the second, resulting in fewer social and economic opportunities.

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# Ageism Doesn't Work

Dominic Abrams • Hannah J. Swift

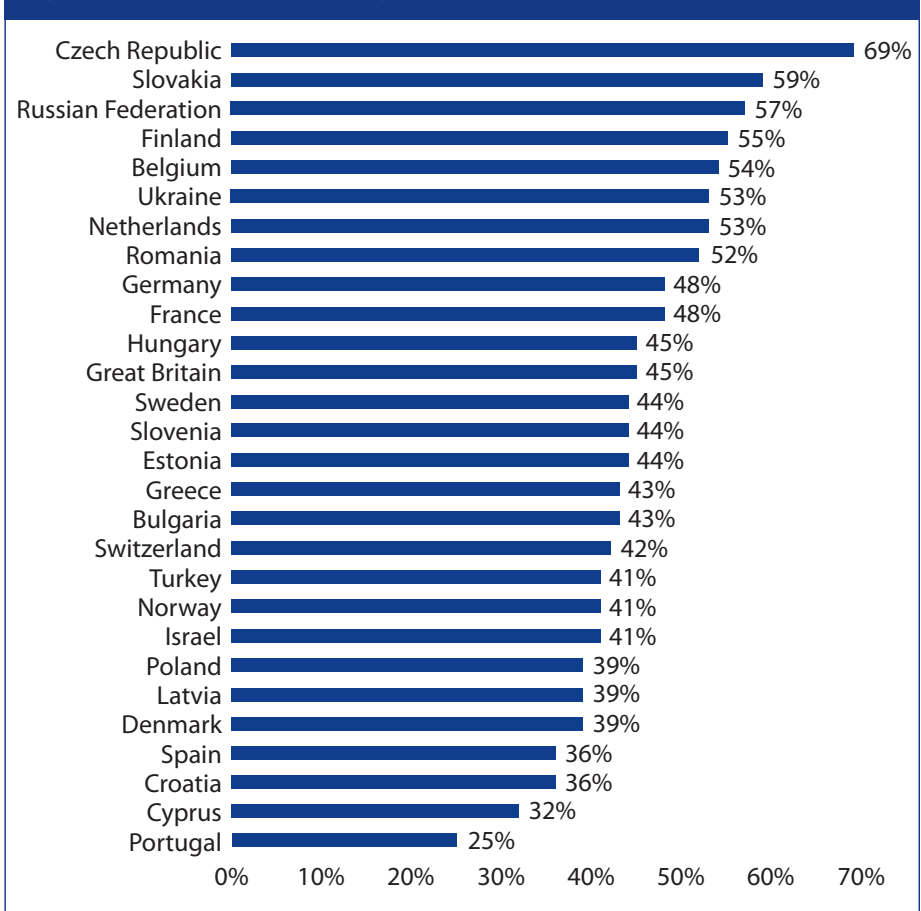
Ageism is the stereotyping of, and discrimination against, people based on their age. Ageism is the most commonly experienced form of prejudice in the United Kingdom and in Europe (Abrams, Eilola, & Swift, 2009; Abrams, Russell, Vauclair, & Swift, 2011; Eurobarometer, 2008). For example, across 28 countries assessed in the 2008–2009 European Social Survey (ESS), 24 percent of respondents reported that they had experienced prejudice because of their gender and 16 percent because of their race or ethnicity. However, an even larger proportion of the population (34 percent of respondents) reported having experienced age prejudice in the last year, 37 percent said they had felt a lack of respect because of their age, and 28 percent said they had been treated badly because of their age. Overall, 46 percent of respondents said they had experienced at least one of these forms of age prejudice in the last year. These data support the inference that ageism is a significant societal problem that affects more than 300 million people throughout Europe.

However, evidence also suggests that ageism is not inevitable. For example, as Figure 1 shows, ageism varies considerably among countries. Therefore, ageism may be strongly influenced by such external factors as culture, legislation, and social and economic conditions—admitting the possibility of developing policies and strategies that would help prevent and challenge ageism.

Age discrimination is more likely to occur when, based on age, an opportunity arises to favor one person over another, or to restrict or deny access to resources (Abrams, 2010). Selection for employment is an example of such situations, so perhaps it is not surprising that people who are not working for pay or retired experience more ageism (Abrams, Vauclair, & Swift, 2011; Abrams et al., 2009).

This article examines some psychological processes underpinning ageism that older workers may face. First, we consider how people use and apply the category labels *old* and *young*. We then describe the associated images and stereotypes of older workers and review experimental evidence that demonstrates how these stereotypes are likely to disadvantage older adults. Finally, we draw attention to the importance of intergenerational relationships within the workplace and wider society as a vehicle for reducing ageist attitudes and their impact on older people.

**Figure 1. The prevalence of ageism experienced in European countries.**



## Age Categorization

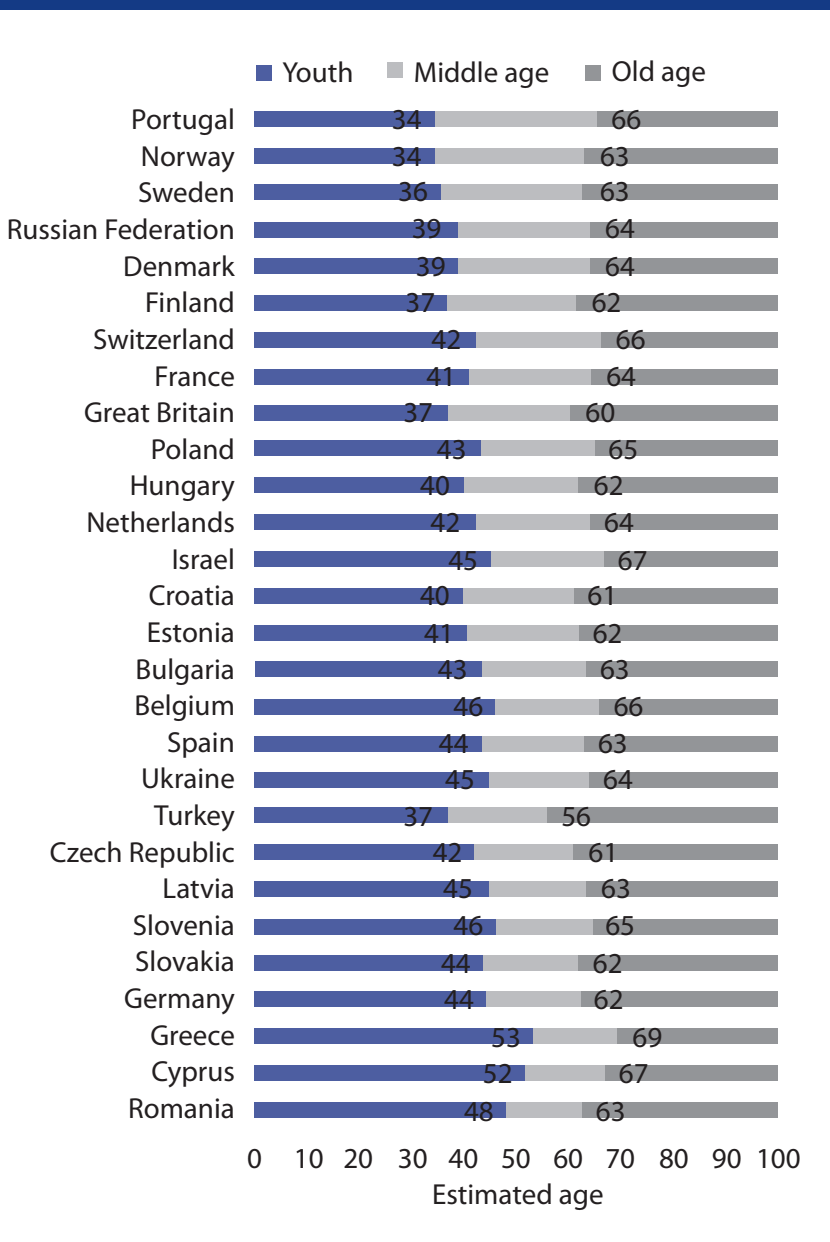
The life course, particularly stages of education, parenthood, and work, is generally segmented by age. This segmentation arises in almost all cultures, although they do not always apply the same thresholds (e.g., age of consent, voting age, retirement age). These age

thresholds are reinforced by legislation, norms, and customs. Category labels and boundaries are important because when people categorize others, they exaggerate similarities among members within a category and exaggerate differences from members of other categories (Tajfel & Turner, 1979). The perception that all older people are the same is an obvious basis of age discrimination because of unwarranted assumptions that older people's needs, likes, and dislikes are the same. Importantly, age categories are not wholly determined by physical aging. ESS respondents were asked to nominate the age at which youth ends and at which old age begins. As Figure 2 shows, these perceptions varied widely throughout the world, resulting also in large variations in the perceived duration of middle age. These data highlight that even the simple categorization of a person as young or old is affected strongly by social context.

### Stereotypes

Age categories are more than labels—they are also imbued with meaning that denotes status and power. Such categories are associated with stereotypes and expectations, which form the basis of prejudice (Allport, 1954). Societal stereotypes are socially shared beliefs about the characteristics (e.g., traits, appearances, or behaviors) of members of a social group (Schneider, 2004). A variety of stereotypes apply to older workers. For example, aging is associated with declining competence (Fiske, Cuddy, Glick, & Xu, 2002), and older workers are likely to be perceived as less energetic, motivated, creative, committed to their careers, productive, technologically savvy, and trainable. In general, they tend to be judged less favorably compared with younger people (Bendick, Jackson, & Romero, 1996; Shore, Cleveland, & Goldberg, 2003). However, the assumption that job performance or ability declines with age is questionable. Although age-related changes occur for certain abilities, these abilities decline gradually and in the very late stages of life. In fact, most older adults remain healthy and functionally capable until very late in life (Czaja, 1995). Indeed, some age stereotypes—for example, that older workers may be perceived as more reliable, loyal, stable, and dependable—are positive (Warr & Pennington, 1993).

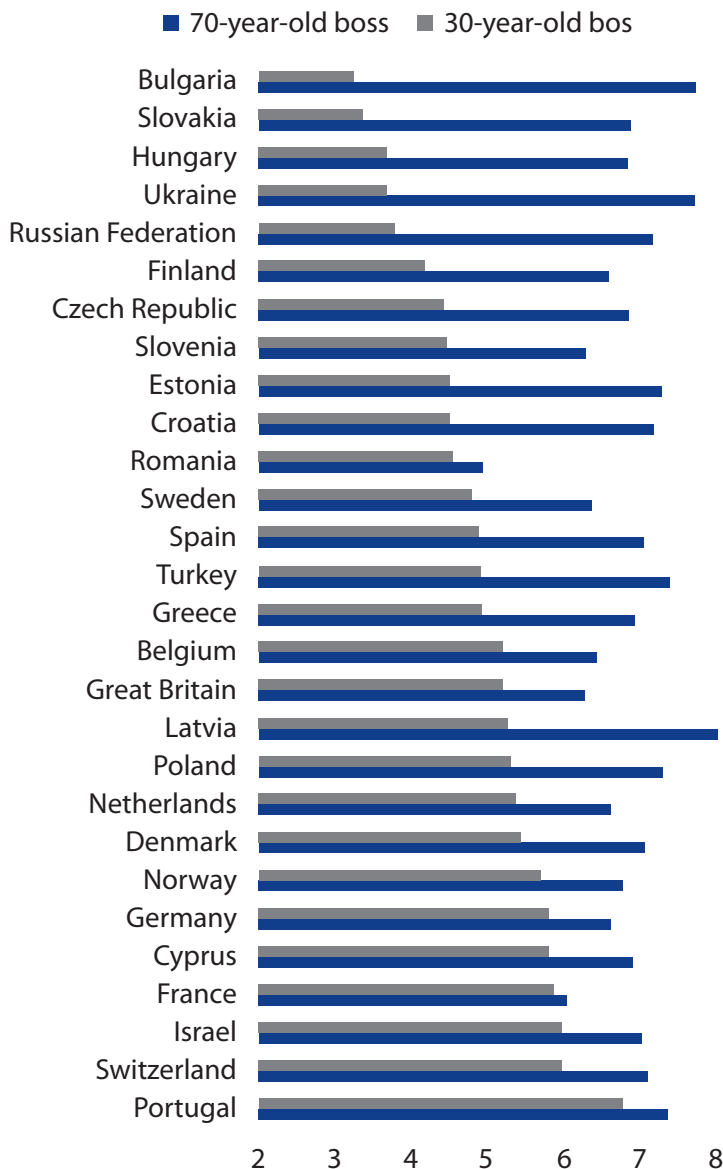
Figure 2. Perceived end of youth and beginning of old age in Europe.



Unfortunately, these positive images of aging may not be sufficient to prevent discrimination based on stereotypes.

We have frequently conducted exercises in which people are asked to imagine that they are an employer whose goal is to maximize profits, and then to consider the positive strengths of two candidates for employment. Person A is described as polite, a skilled mediator, understanding of others' viewpoints, good at solving crossword puzzles, and having a healthy diet. Person B is described as creative, quick to learn new skills, a good driver, facile with the Internet, and into exercising. When asked, most people say they would employ person B.

**Figure 3. Level of acceptability of a 30-year-old and a 70-year-old boss.**



Note. Acceptability was measured on a scale ranging from 0 (completely unacceptable) to 10 (completely acceptable).

We had previously conducted a national survey for Age UK in which we asked people to consider whether a “typical 25-year-old” or a “typical 75-year-old” (or neither) would be better on each of these attributes and aptitudes. The traits people perceived to be typical of a 75-year-old were those used to describe person A, whereas the traits that people believed were associated with a typical 25-year-old were those describing person B (Swift, Abrams, & Marques, in press). This finding shows that even the relatively positive traits associated with older people are likely to create a stereotype-based

disadvantage when they are considered as prospective employees.

### Age Stereotypes and Paternalistic Prejudice

How is it possible to have a positive image of a group yet still discriminate against it? The Stereotype Content Model (Fiske et al., 2002) suggests that most stereotypes are based on two underlying dimensions: perceptions of competence and perceptions of warmth. The combination of different levels of perceived competence and warmth produce different emotional reactions to members of particular social groups. Older people are generally stereotyped as warm, but also as lacking competence. This mixed (positive and negative) stereotype generates emotional reactions that can result in a paternalistic form of prejudice in which older people are more likely to be pitied and patronized (Fiske et al.). Consistent with earlier studies, the ESS shows that older people are likely to be rated higher on warmth (“friendliness”) than competence (“capability”; Abrams, Russell et al., 2011). These stereotypes clearly have negative implications for people’s willingness to give older people opportunities to occupy high-status roles that require competence.

### Aging and Social Status

Different age groups are associated with different social roles, status, power, and social responsibility. The ESS asked respondents how worried they were that employers might prefer people in their 20s rather than people in their 40s or older. Worry increased significantly with

respondents’ age. This outcome can be explained in terms of the finding that middle-aged groups are afforded the highest status in society, followed by younger and older age groups (Abrams, Russell et al., 2011). The implications of status perceptions of a group is that its members may be assumed to be more or less legitimate holders of positions of authority and power, regardless of their competence. For instance, we asked ESS respondents to report how accepting they would be of a suitably qualified boss who was 30 years old and one who was 70 years old. Data showed a clear preference for

younger over older bosses. However, as Figure 3 shows, the extent of this preference differs among countries, being largest in Bulgaria and smallest in France.

### Age Stereotypes Are a Self-Fulfilling Threat

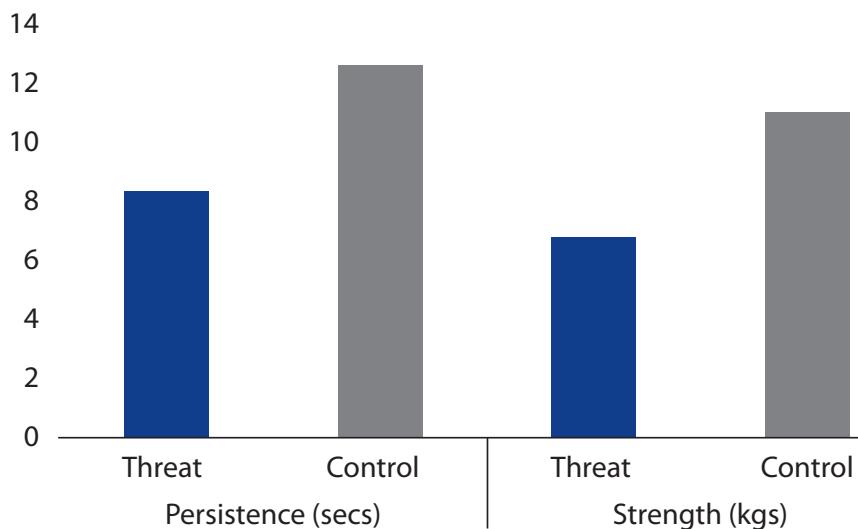
Status judgments and stereotypes can also be applied to the self. The continuous nature of age categorization means that negative attitudes toward older people become increasingly relevant to the self. People's assumptions about the age fit of different types of work influences how they evaluate experiences of work, the type of work they apply for, and what career decisions they make (Shore et al., 2003).

Negative age stereotypes of older people, when applied to the self, also can directly damage performance. When people are being evaluated by others, they may fear confirming a negative stereotype about their group. As a result, perhaps because of anxiety or distraction caused by this concern—that is, stereotype threat—they are liable to underperform and, ironically, to reinforce that very stereotype (Steele, 2010; Steele & Aronson, 1995). Most research on stereotype threat has focused on gender and ethnicity. Stereotype threat affects women's math performance, as well as the intellectual performance of ethnic and minority groups (Nguyen & Ryan, 2008).

There is a relative dearth of research on the effects of stereotype threat on older people. However, older people might be particularly vulnerable to such threats because they are characterized by negative age stereotypes that infer low competence and poor memory ability. Indeed, evidence confirms that older people are strongly susceptible to stereotype threat, showing deficits in cognitive performance when faced with such threat (Abrams, Crisp, Marques, Fagg, Bedford, & Provias, 2008; Desrichard & Köpetz, 2005; Hess, Hinson, & Statham, 2004). However, evidence also shows ways to combat such effects (Abrams et al., 2008).

We conducted a series of studies in which stereotype threat was elicited through an intergroup comparison (Abrams et al., 2008; Swift et al., in press). Older participants were told that their performance would be compared with the performance of younger

**Figure 4. Effect of stereotype threat on older people's hand-grip ability.**



participants. Other participants (control conditions) were simply told that their performance would be compared with that of other people. No mention was made of age. We predicted that the mere comparison with younger people would be sufficient to invoke old-age stereotypes and to produce anxiety about underperformance. Consequently, we expected those who experienced the threat manipulation to underperform on cognitive tasks involving recall, comprehension, math, and verbal ability. In all four studies, participants in the threat conditions performed significantly less well than those in the control conditions, and this difference was partly accounted for by their increased levels of anxiety.

Given that stereotyping of older people involves images of frailty and physical decline, we also examined whether stereotype threat could affect a basic physical capability that requires no skill: squeezing a hand dynamometer as hard and for as long as possible. A hand dynamometer measures grip strength, which is a widely used diagnostic measure of individual disability or capability, muscle strength, and functionality. As shown in Figure 4, we found that the threat caused participants' physical strength and endurance to decrease by almost 50 percent (Swift, Lamont, & Abrams, in press). This finding has significant implications in many domains, because grip strength is an indicator (used in occupational and health assessment) of a person's ability to do many everyday activities, ranging from opening a door to writing, carrying bags, and opening jars and cans.

## Intergenerational Relationships

Stereotypes and misperceptions of age seem likely to reflect lack of contact between people of different generations. According to intergroup contact theory (Pettigrew & Tropp, 2006), increasing the amount of positive contact between members of social groups promotes positive attitudes and behavior. Friendships with individual members of a different age group should therefore generalize to more positive attitudes and less negative stereotyping of the group as a whole.

Society conspires to segregate older people from younger people in various ways, ranging from special arrangements, facilities, and social activities for older people to sheltered housing and age-segregated residential schemes. ESS data show that 86 percent of people between the ages of 65 and 75 had a friend over the age of 70, but only 39 percent had a friend under the age of 30. An important context in which

**“Ageism is a significant source of inequality and unfairness in society, and it has a detrimental impact on performance, productivity, and social cohesion. In short, ageism doesn't work.”**

intergenerational relationships might form and be sustained is the workplace, where people can potentially mix with colleagues, customers, or clients of different ages. In fact, the ESS found that, among people who are working, those between 65 and 75 are equally as likely to spend time with others of their own age (50%) as they are with people in their 20s (52%).

Aside from affecting people's attitudes to others of different ages, our experiments on stereotype threat (Abrams et al., 2008) have shown that participants who have a higher number of friendships with younger people are significantly less vulnerable to the threat effect. Importantly, it is possible to produce this improvement merely by asking participants to *imagine* having a pleasant interaction with a young person. These studies show that maintaining or creating a psychological bridge

between older and younger people has the potential to neutralize, or provide a buffer against, age-related stereotypes.

## Summary and Conclusions

In the context of national and international economic and demographic challenges, ageism and attitudes about aging present significant barriers to older people. Ageism is a significant problem across ESS countries; however, the prevalence of ageism varies considerably, as do perceptions of status and old age. This variability means that different strategies to deal with ageism may be needed if they are to be effective in different countries. Broadly, however, it is also important to recognize that strategies can be deployed at different levels. At the social psychological level, it is important to change people's stereotypes of aging and their associated emotional reactions to older people. It is also important

to find ways to enable older people to challenge such stereotypes and avoid stereotype threat. At the organizational level, it is important not only to raise awareness of the effects of age segmentation and age-based assumptions in terms of their likely costs (e.g., underusing skilled older workers) and lost opportunities but also to incorporate age into procedures that ensure equal opportunities.

At the societal level, age presents special challenges for policy because of the difficulty in defining particular age ranges or boundaries at which particular policies and legislation should apply. We would encourage policies that treat age as a continuous attribute and do not confound age with specific rights, abilities, or needs.

This is not to advocate an age-blind approach. Rather, policies should focus on binding society across age, avoiding stigmatizing labels and treatment of particular age groups or categories. Policies relating to health, housing, and pensions sometimes risk reinforcing age divisions. It is important to be mindful of these effects, as well as to take advantage of opportunities to improve intergenerational contact through institutional support in work and leisure settings. Ageism is a significant source of inequality and unfairness in society, and it has a detrimental impact on performance, productivity, and social cohesion. In short, ageism doesn't work.

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# Is Age Discrimination Ever Acceptable?

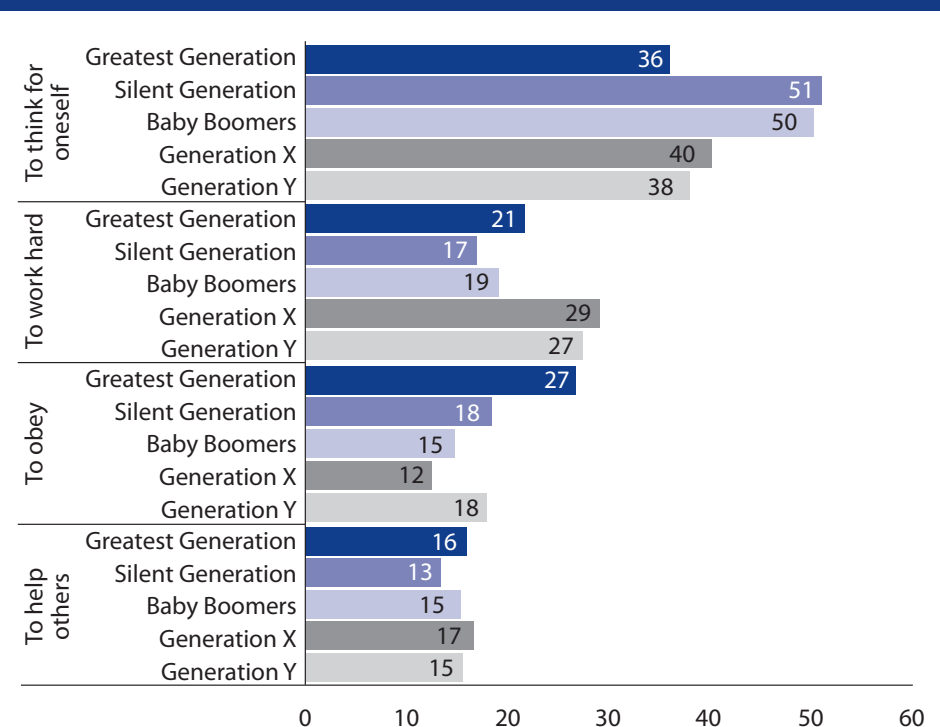
Tay K. McNamara • John B. Williamson

As the U.S. population ages, more Americans may encounter ageism—negative attitudes or actions based on a person’s age—in their day-to-day lives. Age discrimination, in which older people are treated less favorably, and reverse age discrimination, in which younger people are treated less favorably, are becoming recognized as social problems. For instance, according to data from the U.S. Equal Employment Opportunity Commission (2012), the percentage of the charges filed with the commission that are attributable to age has increased steadily over the past 15 years. In 2011, almost one in four claims was related to age discrimination. However common age discrimination is, though, a substantial amount of disagreement exists over how much, if any, is acceptable. So-called acceptable institutional age discrimination is embedded within organizational practices, such as requiring older adults to renew their driver’s licenses more often or allowing senior citizen communities to deny residency to younger adults. In this brief article, we discuss the cultural and economic sources of ageism within the United States, offer some examples of institutional age discrimination that most Americans consider acceptable, and highlight some of the potentially negative unintentional consequences of moving away from the idea that institutional age discrimination is acceptable within limits.

## Ageism in the United States

Ageism stems from cultural and economic beliefs, and often includes a complex mix of both unfavorable and favorable attitudes about older adults. For instance, many Americans believe that cultural differences exist between generations. One survey, conducted by the Pew Research Center (2010), asked people from various generations what made their generation unique. The Millennial Generation (also called Generation Y; born 1981 to 1993) and Generation X (born 1965 to 1980) were most likely to identify technology as what made their generation unique, whereas members of the Baby Boomer Generation (born 1946 to 1964) most often mentioned their work ethic. Furthermore, evidence shows that Americans from different generations value different qualities. As shown in Figure 1, when asked to identify the most important lesson for children to learn to prepare them for life, members of the Silent Generation (born 1928 to 1945) and of the Baby Boomer Generation were most likely to say “To think for oneself.” Members of more recently born generations, such as Generation X and Generation Y, were most likely to state “To work hard.”

**Figure 1. Percentage of adults from five generations saying characteristic is “the most important for a child to learn to prepare him or her for life,” 2010.**



Note. Percentages are based on responses from 1,343 adults, and are weighted by nonresponse-adjusted weights. Differences are significant for “To think for oneself” and “To work hard” at  $p < .05$ . Generations are defined by birth year, including the Greatest Generation (1901–1927,  $N = 50$ ), the Silent Generation (1928–1945,  $N = 231$ ), the Baby Boomers (1946–1964,  $N = 482$ ), Generation X (1965–1980,  $N = 392$ ), and Generation Y (1981–1993,  $N = 188$ ).

Source: National Opinion Research Center (2012).

## Is Age Discrimination Ever Acceptable?

In addition to perceived cultural differences, concerns about the potential imbalances between the economic burdens placed on different generations have given rise to other ageist beliefs. Beginning in the 1980s, concerns about generational equity began to proliferate in policy circles and the popular press, promoting the idea that older individuals were taking too much and giving too little relative to other age groups (Kingson & Williamson, 1993). Proponents of the generational-equity perspective argued that if Americans reduced spending on Social Security and Medicare, more money would be available to spend on educational and other programs for children and young adults (Williamson & Watts-Roy, 2009). The stereotype of older adults as greedy directly contended with the more established stereotype of older adults as financially needy and attempted to present the interests of older adults as achievable only at the expense of younger people.

**“Consider five types of institutional age discrimination: mandatory retirement policies, senior discounts, age-restricted communities, driver’s license retesting for older adults, and age-based determination of who receives organ transplants.”**

The idea of conflict between age groups, manifest in both cultural assumptions about generations and policy discussions, may have taken root in part because of the decreasing affluence of U.S. workers. Rapid growth in real wage rates through the 1960s meant that Americans had reason to be optimistic about their financial futures, leading to a willingness to spend on elders and other groups perceived as needy. However, stagnant or declining wages characterized the period from the 1980s through the 1990s. Furthermore, inequalities in wage rates between educational groups grew dramatically in the 1980s (Autor, Katz, & Kearney, 2008). The late-2000s recession has further reinforced the idea in many people’s minds that not enough resources are available to provide for everyone (Edsall, 2012). Within this context, ageist

stereotypes that pit younger and older adults against each other may flourish.

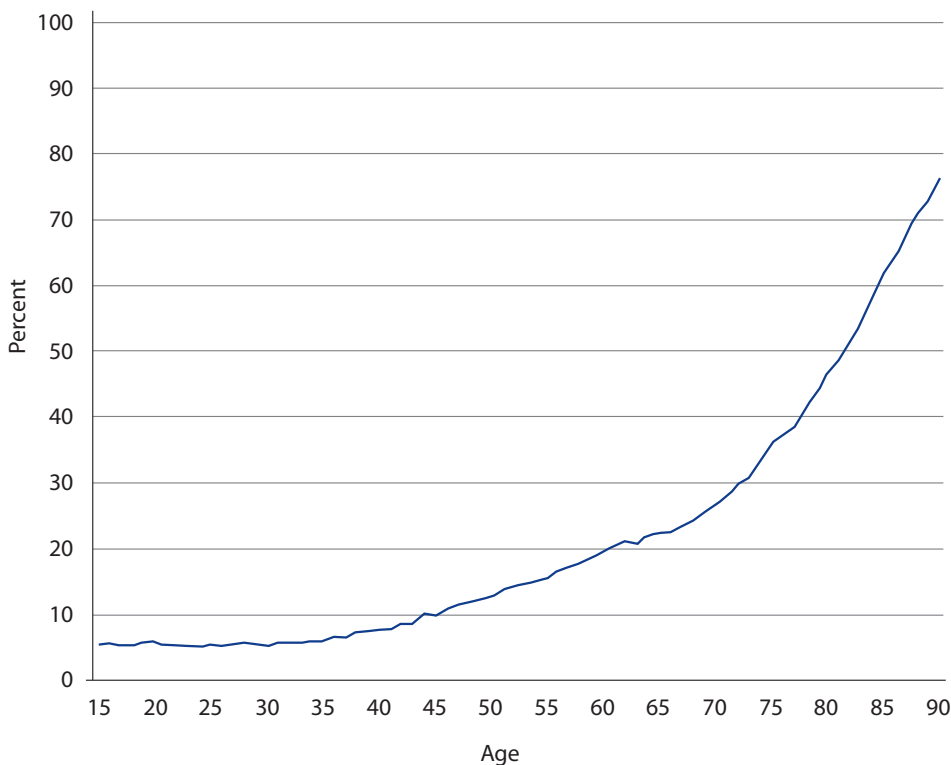
### “Acceptable” Institutional Ageism

Stereotypes, whether they arise from debates over the potential financial burdens of an aging population or beliefs about differences between generations, affect what is thought of as acceptable treatment for adults of different ages. Most people do not consider intentional age discrimination (i.e., practices that are carried out with the knowledge that they are discriminatory against older people) acceptable. More ambiguity surrounds unintentional or inadvertent age discrimination (i.e., practices that are unknowingly biased against older people). Even more ambiguous are various forms of institutional ageism, in which organizational practices are biased against older people, and institutional reverse ageism, in which organizational practices are biased against younger people—both of which are accepted on a day-to-day basis by most Americans.

Historically, most recognized forms of institutional discrimination have concerned race or gender. For instance, *redlining*, sociologist John McKnight’s term for how banks avoided investing in low-income neighborhoods (Sagawa & Segal, 2000), describes discrimination that targets the locations where minorities or other disadvantaged populations live rather than the individuals themselves. The Fair Housing Act prohibited such discriminatory practices as redlining on the basis of race, ethnicity, and religion (Civil Rights Act of 1964). Today, despite the persistence of race-based redlining (Cohen-Cole, 2011; Ezeala-Harrison, Glover, & Shaw-Jackson, 2008; Mendez, Hogan, & Culhane, 2011), many Americans would consider institutional discrimination based on race reprehensible.

At face value, age is often considered analogous to gender or race. In part, this perspective is a legacy of the civil rights movement. The Age Discrimination in Employment Act of 1967, for instance, paralleled Title VII of the Civil Rights Act in numerous ways (Macnicol, 2006). However, much of U.S. society’s behavior suggests more openness to institutional age discrimination than to institutional gender or race discrimination. Consider five types of institutional age discrimination: mandatory retirement policies, senior discounts, age-restricted communities, driver’s license retesting for older adults, and age-based determination of who receives organ transplants.

**Figure 2. Percentage of population that is disabled, by age.**



Note. Percentages are based on responses from 2,474,368 respondents and are weighted by person-level weights.  
Source: U. S. Census Bureau (2012).

- Older adults who need organ transplants, such as those with end-stage renal disease, are much less likely to be placed on the waiting list for a new organ than their younger counterparts. Some evidence suggests that this situation is changing, with patients ages 60 to 75 about twice as likely to receive liver transplants in 2006 than in 1995 (Schaeffner, Rose, & Gill, 2010), but younger adults are still much more likely to be approved for waiting lists.

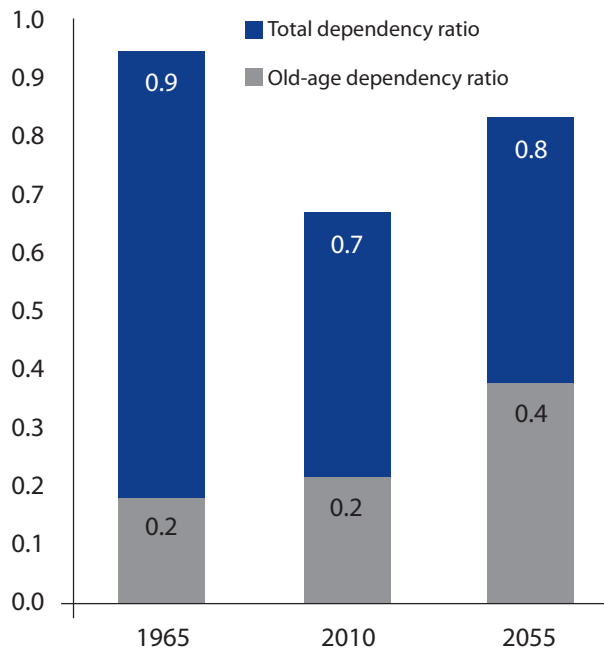
Most or all of these practices are considered acceptable, yet if the same practices were applied to women or to Hispanics rather than to older adults, they would be widely condemned. For instance, a housing community requiring 80 percent White inhabitants would be considered redlining, yet retirement communities enforce similar rules regarding age composition.

- For most occupations, mandatory retirement policies, which require workers to retire at a specific age (such as 60 or 65), are considered archaic and unfair. However, certain occupations (such as firefighting and law enforcement) still are subject to mandatory retirement (Gokhale, 2004).
- Senior citizen discounts—which usually take the form of a percentage price reduction for goods and services—typically are not viewed as harmful types of age discrimination.
- Age-restricted communities, in which 80 percent or more of residents are ages 55 and older, have become fixtures throughout the United States, particularly in states favored by retirees, such as Florida. Based on the Housing for Older Persons Act of 1995, age is considered an exception to laws prohibiting redlining.
- Older drivers in many states have additional or more frequent testing involved in renewing their drivers' licenses. For instance, in 18 states, older adults must renew their licenses more often than younger adults (Adler & Rottunda, 2010).

Requiring only women to be retested behind the wheel for license renewals would meet with widespread public outrage, but the same is not true of elders. Compared with race or gender discrimination, the gray area of age discrimination is large, whereas the black (definitely wrong) and white (definitely right) areas are small.

Why the much different reaction to age discrimination? Implicitly, age is believed to be different in several respects. First, one might assume that older adults are in poorer health than younger adults—an assumption that has some merit. As shown in Figure 2, disability rates steadily increase with age, from 6 percent at age 15 to 77 percent at age 90. Perceived declines in functional ability and health are major reasons for such practices as driver retesting. Second, one might believe that older adults are less well off financially than younger adults—a reason given for such practices as senior discounts. Third, people do not usually cross ethnic, racial, or gender boundaries in their lifetimes, but people do age. Hence, even if people receive more than they give during certain stages of their lives, such as childhood or old age, any assessment of fairness and equity would consider people's net contribution over their entire lifetime rather

**Figure 3. Old-age and total dependency ratios.**



*Note.* Intermediate projections are shown. The child dependency ratio is defined as the ratio of the population under age 20 and the population at ages 20 to 64. The old-age dependency ratio is defined as the ratio of the population at ages 65 and over and the population at ages 20 to 64. Source: Office of the Chief Actuary (2011).

than at any given life stage. Despite the claim implicit in much of the talk about ageism, society's actions and the practices deemed acceptable imply that age is different.

### Unintended Consequences of Institutional Age Neutrality

Attitudes toward age discrimination and ageism reveal two contradictory sets of beliefs. On one hand, as U.S. legislation on age discrimination seems to suggest, people want to treat age as parallel to race or gender. From this perspective, hardly any case of discrimination can be justified. On the other hand, people implicitly treat age as different from race or gender, either because of the prevalent characteristics of older adults (e.g., higher rates of disability) or because people age from advantaged to disadvantaged groups (or vice versa). Overall, the practices prevalent in the United States today, from mandatory retirement for certain occupations to frequent retesting of older adults renewing their driver's licenses, suggest a stance of so-called acceptable discrimination on a scope that would not be deemed appropriate for race, ethnicity, gender, or religious

background. What would be the consequences of moving toward a stance of institutional age neutrality, in which institutional ageism and institutional reverse ageism were considered just as unacceptable as the parallel types of discrimination based on race or gender? Taken at face value, institutional age neutrality would be fairer than allowing and promoting institutional ageism.

However, exactly equal treatment across age groups has potential unintended consequences. First, one of the primary rationales for institutional discrimination of any kind is that not discriminating threatens public safety. For instance, a common argument justifying racial, religious, or gender profiling in airports (e.g., additional screening of male passengers from the Middle East or other geographic areas with large proportions of Muslims) is that it is necessary to ensure the safety of other passengers. Similarly, the perceived acceptability of certain measures, such as requiring older adults to renew their licenses often, hinges on the belief that forgoing these additional tests would endanger other drivers. Although age-neutral methods of ensuring safety (such as requiring all drivers to be retested at frequent intervals) are possible, they are often judged to be too costly. When considering older adults as a group, it might be less expensive to retest just those with relevant health-related limitations (e.g., slower reaction time)—if inexpensive, nonintrusive ways were available to determine who should be retested. Currently, this alternative seems to be politically unfeasible and prohibitively expensive.

Second, neutral treatment across age groups could be seen as a justification for the elimination or scaling back of entitlement programs based primarily on age. Strictly interpreted, age neutrality discards elders as a protected group in need of additional consideration or resources (Macnicol, 2008). In light of concerns that older adults are receiving more than their fair share of economic resources, age neutrality might weaken the rationale for such programs as Social Security and Medicare. This issue is likely to become increasingly important over the next few decades, as the U.S. population continues to age. As shown in Figure 3, the old-age dependency ratio will steadily increase over the next few decades. In 1965, the baby boomers were children and teenagers, and most dependents (defined based on their age) in the United States were under age 20. By 2055, approximately half of dependents will be ages 65 and older.

### Conclusion

"Is age discrimination ever acceptable?" is a question more complex than it might at first appear. Many people think about age discrimination as analogous to gender,

racial, ethnic, or religious discrimination. In fact, age discrimination and discrimination based on other types of social diversity do have many parallels. From this perspective, age neutrality—treating all age groups equally—seems desirable. However, to some extent, age is different from almost every other social category in that almost all people age from one group to another. Furthermore, the rationales for many practices that discriminate based on age are generalizations about the health or wealth of older adults, but the consequences of these practices—both positive and negative—occur within a diverse population of older adults. For instance, the elimination of senior discounts would not be a hardship for relatively affluent older adults, but it might be for those with meager financial resources. Recognizing examples of institutional age discrimination, ranging from those that are generally advantageous to older adults (e.g., senior discounts) to those that are generally disadvantageous to older adults (e.g., mandatory retirement), provides a starting place for thinking about the amount and type of age-related differential treatment deemed acceptable.

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# Age Discrimination, Work, and Retirement

Bill Bytheway

When undertaking research into age and retirement, one soon encounters a basic paradox: Older workers recognize that retirement is inevitable (assuming their continuing survival) while at the same time, regardless of age and circumstance, finding it difficult to accept that the time for them to retire might have already come.

In my own research, I have come across many examples of this paradox—for example, when interviewing redundant older steelworkers in South Wales in the 1980s (Bytheway, 1986, 2011) and, more recently, when researching age discrimination in the United Kingdom (Bytheway, Ward, Holland, & Peace, 2007).

In the United Kingdom, as in many other countries, government regulation over the last century has imposed a nonnegotiable universal policy of retirement at prespecified ages. With retirement come the state pension and other compensations for the loss of employment. Arguments supporting such a universal policy point out that it is open and fair: It does not discriminate in favor of particular individuals and everyone knows in advance when they are due to retire. Occasional debate has occurred about the ways in which different retirement ages have been imposed on different groups (e.g., men retiring at 65 and women at 60), but this state of affairs has rarely become a highly contentious issue.

With the rise in recent years of legislation promoting equality and human rights, however, litigious activity regarding the impact of retirement policies and practices on individual employees has been increasing. The most well-known recent example in the United Kingdom is the case of Miriam O'Reilly. In January 2011, an employment tribunal decided that the British Broadcasting Corporation (BBC) had discriminated against her when it terminated her contract as a television presenter. The tribunal found that she had been dropped because of her age (then 53 years), and that she was victimized by BBC management following newspaper articles in which she had criticized the Corporation for dropping middle-aged women presenters. O'Reilly commented:

I think broadcasters now realise that we are not going to take it. If you lose your job because of your age and not because you can't do it, it's a disgrace, it shouldn't be happening. After more than 25 years with the BBC I deserved to be judged on my ability and not on my appearance. I don't think having wrinkles is offensive. (Plunkett, 2011, ¶ 5)

It is significant that in this comment, O'Reilly links age and appearance, implying that the BBC's decision had been based on *both* chronological age and how she appeared on the television screen. She also implies that the BBC had been disloyal to her in disregarding her ability to do the job.

O'Reilly is just one of an increasing number of older workers in the United Kingdom who have taken their cases to an employment tribunal. The number of cases brought to tribunals on grounds of age discrimination increased by 79 percent between 2008 and 2010. This increase compares with (a) a small decrease in the number of sex discrimination cases, (b) no change on grounds of race, and (c) an increase of 9 percent in relation to disability (HM Courts & Tribunals Service, 2011, Table 2.1). In 2010–2011, sex discrimination cases were still much the most common, but age discrimination cases outnumbered race discrimination cases and, given the trend, age will have overtaken disability in 2011–2012. Only 14.3 percent of age discrimination cases brought forward were heard, most cases being either withdrawn or resolved through arbitration and, of those that were heard, only 29.3 percent were successful (HM Courts & Tribunals Service, Table 2.2).

This trend is clear evidence of how litigation addressing possible age discrimination has, very rapidly, become a familiar feature of UK public life. Coverage in the media has alerted older people to the possibility that they are being denied some of their legitimate rights. That said, many acknowledge the issue of intergenerational equity (Abrams, 2012), and a frequent argument is that older people, such as O'Reilly, should make way for younger people. I certainly found that when steelworkers were being made redundant (Bytheway, 1986), they did not complain if they knew that a younger person—someone who might otherwise have been unemployed—would be taking their job.

In attempting to resolve these contradictions, a broader perspective on employment, its temporal characteristics, and the consequences for people's experience and reactions to age is helpful. Employment has five basic

elements. First is the legal contract that exists between employer and employee. Second are the jobs—the activities and tasks—that employees undertake, which potentially require skill, knowledge, and experience. Third is payment, typically either a salary paid at the end of the month or a weekly wage. Fourth is the timetable, usually organized around strict routines and in a way that directly links work with payments. The final element is the social status of the job, which grants the employee an identity and perhaps a standing in the local community.

Adam (2004) has recognized the fundamental significance of time in employment: Work is commodified and exchanged for money largely through chronology. Recognizing body rhythms and social commitments outside work, working time is regulated, often limiting the number of hours in the working day, days in the working week, and weeks in the year. Workers are typically paid either weekly or monthly, and although some employment is short term, potentially the contract is open-ended and the job is described as permanent. Recognizing that the temporal element in such open-ended employment may extend over many years, it is inevitable that a worker's age is a potential complication. Through the course of the twentieth century, many governments have established systems that enable workers, when they leave the labor force, to receive a pension in lieu of employment-related income.

How, then, do individual employees experience their changing relationship with work? And how is age invoked when the prospect of retirement is raised? The antidiscriminatory argument takes two forms. One is represented well by the image of older workers being thrown on the scrapheap, the implication being that, regardless of ability and experience, workers have no further value once they reach a particular age. A logical extrapolation of this interpretation of retirement is age-determined euthanasia—as characterized by a vigorous debate in the United Kingdom in 2010 triggered by the remarks of successful author Martin Amis (Davies, 2010).

The second form is more general and more difficult to promote in practice: that age is completely irrelevant and that it should be ignored in all decisions associated with employment and retirement. This is hard to sustain in the face of indisputable biological differences over the life span. Compare, for example, two individuals, one age 40 and one age 80. Able-bodied 40-year-olds are considered capable of entering into full employment. What is defined as full employment—so many hours a week, and so forth—is based on assumptions and evidence about the capabilities of people in midlife and

**“This trend is clear evidence of how litigation addressing possible age discrimination has, very rapidly, become a familiar feature of UK public life.”**

about what they are willing to undertake. In contrast, there are few expectations that octogenarians might be contractually employed to undertake work. People in that age group may occasionally engage in activities that generate an income or are work-like, but few would agree that they should be subjected to employment contracts and regulation.

Why is this? The answer relates to the bigger picture in which biological processes ensure, for example, that the 40-year-old will not survive another 100 years. Life span for most people in Western societies is between 70 and 90 years. Statistically, mortality is relatively predictable, so it is hardly surprising if retirement legislation and practices are formulated around certain ages, such as 60 or 65 years. Put another way, a period of chronic impairment or terminal illness, perhaps no more than a few days but perhaps extending over several years, typically precedes death in later life, a time when being employed would be intolerable for both older person and employer. The state of dependency characteristic of the very youngest and the very oldest in society ensures a process whereby an individual is inducted into the world of work at one end and, in later life, the converse, when an exit from the workforce is negotiated (Bytheway, 2011). As Kohli (2007) has pointed out in discussing the life course of modern societies:

The life course has been structured around the new *system of work* based on wage labor. This applies to the shape of the life course—where its most obvious temporal ordering has become its “tripartition” into periods of preparation, “activity,” and retirement—as well as to its organizing principle. (p. 255)

Given the harsh reality of biological changes and institutionalized life-course transitions, it is reasonable to ask what is discriminatory about age-related retirement policies. The answer, I would suggest, lies in the distinction

between the concept of fairness and how retirement policies are developed and implemented in practice.

Paradoxically, legislation introduced in the United Kingdom in 2006 with the intention of outlawing age discrimination in employment led to a *consolidation* of age-specific mandatory retirement (Bytheway, 2007). This occurred because the wording of the legislation directed employers to prohibit discrimination *within* employment. Policies and practices regarding retirement were considered external to employment. Various campaigns and actions objected to this situation and, as a result, mandatory retirement ages were made illegal in 2011 (Mitchell, 2011).

Nevertheless, following a recent court ruling, employers are still able to set a mandatory retirement age if they serve the aims of either fairness or dignity—in particular, if doing so would promote access to employment for younger people, facilitate the participation of older workers in the workforce, enable efficient planning for the departure and recruitment of staff, and avoid disputes about an employee's fitness for work over a certain age (Insley, 2012).

At the time of this writing, the UK government's official Web site states that "the default retirement age, which allowed your employer to make you retire when you reached 65, is being abolished. This means that in many cases you should be able to retire when the time is right for you" (Directgov, 2012, ¶¶ 8–9).

The Web site goes on to state that employers can enforce retirement only "if this can be objectively justified in the particular circumstances" (Directgov, 2012, ¶ 10). This action, it says, is then open to challenge at an employment tribunal. To be justified, the employer has to demonstrate that discrimination "is a proportionate way of achieving a legitimate aim" (Directgov, ¶ 21). A proportionate way is when age-based retirement is the only reasonable option available for achieving the legitimate aim. The Web site also indicates that a "wide variety of aims may be considered legitimate" but that all "must correspond with a reasonable need for [the] employer" (Directgov, ¶ 24).

What this information clearly indicates is that policies and practices regarding the timing of retirement in the United Kingdom are currently in a state of flux, with court rulings relying heavily on judgments regarding legitimacy, reason, and proportionality.

Clearly, an employment tribunal can still judge an enforced retirement as unacceptable on the basis of discrimination—but the extent to which such a judgment relates primarily to the use of a set chronological age is uncertain. It seems likely, however,

that should an employer impose retirement on employees in the future, simply upon their reaching a specific birthday, then successful litigation is likely to follow.

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# Age Discrimination Legislation in the United States and the United Kingdom

Luke M. Franz • Joanna N. Lahey

## Introduction

Whereas the United States has had federal legislation outlawing employment discrimination based on age since the 1960s, most European countries have only recently instituted such legislation. The Council Directive 2000/78/EC, put into place in 2000, required EU member countries to design their own age discrimination laws by 2006. These laws are continually being updated, altered, and amended.

As the baby-boom population ages, retired workers stress national pension systems throughout the world. Viewing the new European laws within a framework developed for analyzing U.S. data can help guide EU policymakers and researchers as they grapple with how to increase employment for the older population.

Although the goal of these age discrimination laws is to increase the employment of older workers, theoretically the effects of these laws are not as clear. When a worker becomes more difficult to remove, firms are less likely to take a chance on hiring that worker. Empirical research from the United States has already shown that protection laws can have unintended effects (Lahey, 2008a, 2008b).

Each country in the European Union has created its own age discrimination laws guided by the principles put forth by the Council Directive. Although similar in many ways, a diverse set of these laws exists across the European Union, and the different aspects of these laws may result in different effects. This article introduces these new EU laws, with a special focus on the United Kingdom, and—based on U.S. research on the Age Discrimination in Employment Act of 1967—provides a framework for thinking about how these laws affect employment outcomes for older workers.

## U.S. Discrimination Law

**Origin.** In 1965, the U.S. Department of Labor drafted a report on age discrimination in the economy that would become the basis for the 1967 federal Age Discrimination in Employment Act (ADEA). This report focused on how incorrect and negative stereotypes not only hurt older workers but also hurt the economy by keeping productive older workers from contributing.

The ADEA protects people from age-based discrimination in terms of hiring, firing, and other conditions of employment. The original law protected

workers from ages 40 to 65 and allowed for mandatory retirement after age 65. The Act also made it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. In 1978, the law expanded to cover those ages 40 to 70 and, in 1986, removed the upper age limit entirely.

In 1979, the Department of Labor shifted enforcement responsibility to the Equal Employment Opportunity Commission, which strengthened the implementation of the ADEA (Hersch & Viscusi, 2004; Neumark, 2001). Currently, the ADEA covers workers in firms of 20 workers or more.

Unlike the U.S. Civil Rights Act of 1964, which allows damages for emotional suffering and punitive damages, the federal ADEA limits awards to plaintiffs to make-whole status—that is, returning plaintiffs to the point where they would have been had they not been discriminated against. These awards can include hiring, reinstating, promoting, providing back pay, restoring benefits, and paying lawyer fees.

Employers can use age as a qualification in employment decisions if there is a bona fide occupational qualification (BFOQ) that directly relates to age—for example, in a theatrical acting position. In practice, the courts also allow age to be considered as a BFOQ in cases where public safety might be affected, including such occupations as pilot, air traffic controller, or bus driver.

The interpretation of the law in court is subject to whether disparate impact cases are allowed in addition to disparate treatment cases. Disparate treatment cases require intentional discrimination by an employer, whereas disparate impact cases occur when a policy can indirectly affect a protected group differently than an unprotected group. A common example of a disparate impact policy would be a minimum height requirement that has a disparate impact on women, who are shorter than men on

average. For age, disparate impact often involves decisions based on seniority or wages, such as the decision to fire those who have the highest salaries or who have been with a firm the longest. Recently, in *Smith v. City of Jackson* (2005), the U.S. Supreme Court held that the ADEA authorizes recovery for disparate impact claims of age discrimination.

**Effects and important aspects of the law.** Laws protecting people from age discrimination potentially have both positive and negative effects. Any law that manipulates free-market decisions can have negative impacts on individual firm productivity, in this case preventing employers from making efficient hiring and firing decisions. However, if the law is fixing market failures, such as those caused by incorrect stereotypes, lack of information, or tastes for discrimination, it can improve firm productivity. Overall productivity in the economy may be increased if the law allows older potential workers who would have been unproductive in the absence of the law to become more productive, although resources used to follow and enforce the law may be a strain on society.

On an individual level, because it is much easier to detect discrimination once a worker has been employed, the law will protect those with jobs from termination and other negative actions. However, short of blatant discriminatory language or advertisement, it is almost impossible to detect discrimination on the hiring side. Therefore, the law may prevent those who might have been hired in the absence of the law from being hired.

Adams (2004) has found that small positive effects on employment for older workers occurred when the ADEA was instated in 1967. Between 1978 and 1979, the law was strengthened through expansions and increased enforcement. Empirically, Lahey (2008b) has exploited the differences in state legal environments after the federal law was strengthened and has found that employers are less likely to hire and less likely to fire the groups most likely to sue for age discrimination—that is, White men over age 50 (O'Meara, 1989; Schuster & Miller, 1984). This finding suggests that firms take the probability of a lawsuit from older applicants into account when making decisions. In contrast, women of the same age group are subject to no negative impacts.

Knowledge of age discrimination laws may protect currently employed workers from discrimination and dismissal. However, publicity of these laws could have negative consequences if firms react (or overreact) by increasing discrimination on the hiring margin for fear of being stuck with a worker who will be difficult to remove later.

Other work has focused on the effect of changes specific to mandatory retirement. Von Wachter (2002) has

examined the shift of mandatory retirement to age 70 in 1978 and its end in 1986 using the predicted probability of being covered by mandated retirement. He has found that, in 1986, the labor-force participation of workers ages 65 and older increased by 10 percent to 20 percent in certain industries. Ashenfelter and Card (2002) have shown that the abolition of retirement for college professors in 1994 reduced the number of those age 70 and age 71 who retired. However, Wood, Robertson, and Wintersgill (2010), examining research on mandatory retirement across several countries, have suggested that age legislation has little effect on participation of older workers, the economy, or public spending unless accompanied by other policies to encourage work at later ages.

### European Case

**Council Directive 2000/78/EC.** The European Union's Directive 2000/78/EC guides European age discrimination law. The framework directive was agreed on in 2000 and member countries were to implement the Directive as national law by December 2003, with the allowance that they could request an additional 3 years to formulate age and disability legislation (Adnett & Hardy, 2007; Riesenhuber, 2009). Most member countries did not have age discrimination legislation of their own prior to the inclusive legislation. The Directive covers only employment discrimination and specifically excludes state social security and social protection programs.

The European Commission's stated reasons for examining the issues of age discrimination were heavily influenced by economics. The population of older people in Europe has been increasing in relation to those of working age, an increase that stresses pensions and other public finance systems. The European Commission also recognized the diversity among older people—some will pressure governmental systems, but some can be tapped to contribute to these systems. The Commission thus hoped to increase the employment rate of able-bodied workers over the age of 50 in European countries by eliminating age discrimination (Sargeant, 2006).

Like the early versions of the ADEA, but unlike the modern ADEA, Directive 2000/78/EC allows member countries to specify mandatory retirement ages (Adnett & Hardy, 2007; O'Connell, 2005; Riesenhuber, 2009). The mandatory retirement age for many member countries is 65, although exceptions exist. However, the Employment Equality (Repeal of Retirement Age Provisions) Regulations called for the removal of the default retirement age in the United Kingdom in 2011. Although the implications of this change are unclear as of now, other European Union member countries are likely to emulate the United Kingdom.

**Exemptions, procedure, and punishments.** The Directive ensures that those who believe they have been discriminated against can bring their complaints through the national court system. Article 17 of the Directive allows member countries to decide their own sanctions, so long as they are “effective, proportionate and dissuasive” (Council Directive 2000/78/EC, p. 6). In practice, these penalties vary widely. Several EU countries offer compensation similar to the make-whole legislation in the United States.

In addition to the potential exemptions for people over mandatory retirement age, Directive 2000/78/EC allows countries to make exceptions for certain industries, such as the military, the judiciary, and the government. The Directive also allows exceptions for *occupational requirement*, a term similar to the BFOQ in U.S. law, and for legitimate aims. The list of potential occupational requirements is similar to that of the United States, primarily focusing on acting and occupations in which safety could be compromised by conditions correlated with aging. However, the list of legitimate aims provided in Article 6.1 to allow for direct age discrimination is much broader than the exceptions allowed in the United States, including such items as experience and seniority, time before retirement, and the promotion of vocational integration (Adnett & Hardy, 2007; O’Cinneide, 2005; Riesenhuber, 2009). The United Kingdom has an even broader list of legitimate aims that address company planning and training goals.

Similar to U.S. law, EU law defines two types of discrimination: direct discrimination (comparable to disparate treatment) and indirect discrimination (comparable to disparate impact). In cases of direct discrimination, Directive 2000/78/EC includes something called a comparator. Article 2.1.2(a) states that “direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been, or would be treated in a comparable situation” (Council Directive 2000/78/EC, p. 3). In practice, this requirement is difficult to implement because it is not always easy to find a direct comparator, either real or hypothetical (O’Cinneide, 2005). In cases of indirect discrimination, it is generally necessary to show that the complainant is both a different age than the comparator and better qualified. Other factors that may shift the burden of proof to the defendant include statistical differences in success rates between age groups, discriminatory comments or language, lack of transparency, a mismatch between formal selection criteria and actual selection criteria, and discriminatory questions during an interview (O’Cinneide).

**UK case study.** As stipulated by the Directive, the United Kingdom put into place The Employment Equality (Age) Regulations in October 2006. This new law followed the guidelines laid out in the Directive, as well as provided for an optional default retirement age of 65. The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (SI 2011/1069) phased out the default retirement age of employees. In October 2012, the phase-out period will be terminated and the default retirement age will officially be eliminated.

This new area of law is problematic because of the ambiguity of what constitutes a legitimate aim for retirement. In the United States, BFOQs are limited to aims directly connected to the job. In the United Kingdom, legitimate aims include business issues, such as lower costs, as well as aims that address the broader social desires to generate fairness and preserve the dignity of older workers. On May 6, 2012, the UK Supreme Court ruled in *Seldon v. Clarkson Wright & Jakes* that employers do have justification for implementing a mandatory retirement age if they can establish these broader legitimate aims—although whether this justification will hold under the new law is uncertain.

An additional difference between the United Kingdom and the United States is the idea, prevalent in Europe, that the amount of labor in the economy is fixed and that removing older workers will create jobs for younger workers. This idea, termed *the lump of labor fallacy* in economics literature, is both theoretically and empirically incorrect. Indeed, Wood and colleagues (2010) have found little evidence to support the idea that banning mandatory retirement decreases employment of younger people.

### Conclusion

As the population of the European Union ages, age discrimination and retirement are going to be on the forefront of public debate. The U.S. cases have shown that enforcement of legislation matters. The UK laws, with their legitimate aims—which differ from the more limited BFOQs of the United States—introduce ambiguity about what is allowable under these new laws. It will be up to the court system to clear up the uncertainty; until then, it is a safe assumption that businesses will err on the side of caution. Additionally, case law and practice will determine the extent to which these new laws against age discrimination are enforced and publicized. Laws that are enforced and publicized should have greater effects, both intentional and unintentional, than those that are not.

As a caution, the framework developed for analyzing the U.S. age discrimination laws may not be directly applicable to the new European laws. Possible reasons

include differences in culture and ideologies, different political systems, and differences in timing of laws in place (Burca, 2012). Legislation is not enough to enact positive change—it must be accompanied by changes in the mindsets of citizens through changes in pension programs, training, and education. European cultures may not quickly adapt to the idea of working at older ages. Time and incentives are necessary for this cultural shift. The prohibition of explicit age-based limits in employment advertising under the new laws may help this shift. Economic growth or contraction will also have strong effects on employment for older workers and the viability of public systems.

In the United States, legislation prohibiting age discrimination has existed for decades, but its effects are still not completely understood. Prohibiting age discrimination in the United States has had positive effects for those workers already employed, but can have negative effects on those seeking work. The effects of age discrimination law in Europe are only now beginning to be realized. Depending on the different characteristics of these laws, they may have little effect or they may change how older people are perceived and treated by employers—for better or for worse. However strong the effects of these laws, it must be emphasized that these age discrimination laws do not work in a vacuum. Ages of eligibility for pension, disability, and social security may have stronger effects on the social norms surrounding older employment than laws prohibiting age discrimination.

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# Action Against Age Discrimination: U.S. and UK Comparisons

*John Macnicol*

## The Concept of Discrimination

All legislative action against employment discrimination is contradictory and dualistic, designed to enhance both social justice and economic efficiency. On the one hand, selection by merit, without regard to the productivity-irrelevant characteristics of race, gender, age, religion, sexuality, or disability status, solidifies individual rights and contributes to the establishment of the “egalitarian plateau” that should be a feature of modern, liberal democratic societies (Kymlicka, 2002, pp. 3–4). On the other hand, application of the merit principle can be a more efficient (and ruthless) method of employee selection: If an employer can demonstrate that a personnel decision was made largely on grounds of productivity, that decision will be judged nondiscriminatory in law.

It also needs to be borne in mind that discrimination as an explanation for unequal outcomes tends to be favored by politically centrist social democrats. Those on the left would argue that the inequalities of capitalism are the real cause: Because many of these inequalities originate very early in life and are embedded in socioeconomic structures, antidiscrimination legislation is too little, too late. By contrast, free-market liberals would argue that unequal outcomes are caused by such factors as culture, tastes and preferences, genetic endowment, and cognitive deficiencies. They even argue that discrimination would never occur in a true free-market society—employers would never discriminate irrationally, because if they did their profits would suffer—and they tend to oppose legislation against employment discrimination as an interference in what should be a free market for labor.

Another salient point is that the whole equal-opportunities movement has been criticized for establishing little more than a weak concept of equal treatment, which can be used to justify unequal outcomes or can legitimate coercive policies—such as labor market activation via compulsory workfare. Oddly, many advocates of equal opportunities seem unaware of the fact that the merit principle can be used in this way. For example, a leading American pioneer of anti-ageism has suggested that a major objection to mandatory retirement is that it is an inefficient way of distinguishing between productive and unproductive workers; it should therefore be replaced by more “rational” personnel procedures: “Seniority or tenure rules could be waived, or open competition for promotions regardless of age could be used, or periodic reviews of productivity, etc., could be undertaken to

weed out those with diminished abilities” (Palmore, 2006, p. 848).

The problem is, of course, that this approach would create new victims of an equally unjust form of discrimination—against those with suboptimal productivity.

## Ageism and Age Discrimination

A distinction is often made between ageism in social relations and attitudes on the one hand, and age discrimination in employment on the other. This distinction is by no means hard and fast, for the two may overlap: For example, an employer’s negative attitude toward older workers may be a function of his or her own fear of aging, decrepitude, and death. However, the distinction is analytically useful. Ageism can be defined as those attitudes, actions, and vocabularies that assign a diminished status to individuals solely or mainly on account of their chronological age. It is a relatively recent concept, dating from the 1960s civil rights movement (Butler, 1969)—although age-based prejudice has long been researched by psychologists (Tuckman & Lorge, 1953).

By contrast, age discrimination in employment has been discussed in the United States since at least the 1930s. Essentially, it refers to the use of an age proxy in personnel decisions—notably hiring, firing, remuneration, promotion, demotion, and mandatory retirement—and is considered unjust because heterogeneity in health status, cognitive ability, and working capacity increases as cohorts age. The main issue here has always been whether the labor-market problems of older workers are caused by discrimination per se or by economic restructuring that diminishes their job opportunities.

In the view of this author, discrimination is only a contributory cause and changing labor market demand the main cause, for a number of reasons: In both the United States and the United Kingdom, the labor-force participation rates of older women have *risen* since the 1950s (indicating that, if discrimination is the cause, logic says that it must be sex discrimination against men—and this conclusion is clearly absurd); the average age of permanent labor market exit has fluctuated (e.g., rising steadily since the early 1990s), which cannot be explained by changes in the intensity of discrimination; and older workers' labor force participation rates are regionally patterned in a way that arises more from deindustrialization than from the negative prejudices of employers. Again, a discrimination analysis locates the problem at the level of the individual firm, whereas it is much more caused by variations in demand across different labor market sectors. Many other difficult problems exist, such as whether employers' reluctance to hire older workers is primarily a product of "rational" factors (fewer future life years) or "irrational" ones, such as ageist prejudice (Macnicol, 2006).

To these two aspects of ageism has recently been added age discrimination in the distribution of goods and services. This subject has seen much debate in the United Kingdom and is now partially covered by the 2010 Equality Act; it appears to have had less discussion in the United States. The Act's provisions represent a laudable attempt to tackle long-unaddressed issues of age discrimination in such areas as financial services (particularly insurance) and health care. For example, otherwise fit and healthy individuals can find their car or holiday insurance premiums suddenly rise on their attaining an arbitrary age (most commonly 65 or 70), regardless of their individual claim history. However, major problems arise from trying to establish an age-neutral access to goods and services. For instance, in health care there is a complex balance of both positive and negative allocations across the life course, and much age-based targeting (such as screening) can be viewed as reasonable, given the incidence of morbidity by age. Again, travel or motor insurance premiums tend to reflect average risk by age. Concessions to older people (such as free or subsidized public transport) also have an adverse impact on younger age groups, and therefore could amount to indirect age discrimination. These examples illustrate the key question in all discussions of the rights and wrongs of age discrimination: Exactly when is the use of an age proxy reasonable, and when is it unreasonable?

### Legislative Action Against Age Discrimination in Employment

It is curious that the United States—a welfare laggard in so many other ways, and a country with markedly less employment protection than most other industrialized nations—should have introduced the Age Discrimination in Employment Act (ADEA) as far back as 1967, more than 40 years before the United Kingdom. The ADEA outlawed mandatory retirement and aspects of age-based employment discrimination for all workers ages 40 to 65. This upper age limit was raised to 70 in 1978 and largely abolished in 1986.

The ADEA was in part an obvious response to the burgeoning U.S. civil rights movement (more advanced in that country because of its unique racial history), as well as to the compelling evidence that finding new employment became progressively more difficult after the age of 40 (U.S. Department of Labor, 1965). There had been much discussion in the 1950s of the long-run fall in the labor force participation rates of older American men, including the possible role played by employers' prejudices against older workers (Drake, 1958). Again, gray-power pressure groups have always been more highly developed and influential in the United States. A less obvious and more contentious impulse was that the ADEA attempted to improve the quality of labor supply via the rational criterion of productivity rather than the irrational one of age. The principal defenses written into the Act—where age is a bona fide occupational qualification or where an employer cites reasonable factors other than age—have been refined by numerous legal judgments confirming the principle that if a test of employment is productivity related, it can be a rational basis for compulsory retirement.

The ADEA has become an accepted part of U.S. employment practices. The Act encountered some opposition from conservatives, who dislike its apparent interference in a free market for labor and have labeled it a litigation bonanza for middle-aged, middle-class White males, who form a majority of ADEA plaintiffs (Epstein, 1992). However, lawyers working with victims of age discrimination are convinced that it performs an invaluable function, that reported cases represent only the tip of an iceberg, and that much more needs to be done (Gregory, 2001).

Precise verdicts on the ADEA's success are difficult to pronounce, for the simple reason that no counterfactual exists: It is impossible to know what would have happened without it. One empirical study purports to show that the ADEA has improved the employment prospects of older American men (Neumark, 2001) and

**“This trend is very similar to the pattern in the United Kingdom and other comparable economies, indicating that the ADEA has not insulated the United States from the changes in the labor force participation rates of older people that industrialized societies without such legislation have experienced—a steady fall from the early 1970s to the 1990s, and then a slow rise.”**

another, conducting a comparison between U.S. states between 1964 and 1967 (that is, before the ADEA) has claimed that state laws protected workers to some extent from compulsory retirement (Adams, 2004). However, there are numerous methodological problems to be overcome in such research, such as controlling for each state’s local economic conditions.

At the macro level, a major interpretative problem is that the ADEA’s introduction was quickly followed by the post-OPEC oil price shock, which triggered a recession and a massive economic restructuring in all industrialized economies. Deindustrialization and the growth of service jobs (many of them low paid, part time, and feminized) caused the labor force participation rates of older American men to decline between the early 1970s and the early 1990s; improving economic conditions then caused a slight rise. In 1970, 83.0 percent of men ages 55 to 64 were in employment; by 1980, this proportion had fallen to 72.1 percent and by 1990 it was 67.8 percent; however, by 2010 it had risen to 70.0 percent. Age discrimination must only have been a contributory factor, because the labor force participation rates of American women ages 55 to 64 rose steadily over the same period, from 43.0 percent in 1970 to 60.2 percent in 2010.

This trend is very similar to the pattern in the United Kingdom and other comparable economies, indicating that the ADEA has not insulated the United States from the changes in the labor force participation rates of older people that industrialized societies without such legislation have experienced—a steady fall from the early 1970s to the 1990s, and then a slow rise. Indeed, the fall in the labor force participation rates of older American men between 1970 and 1995 occurred at almost the same rate as that experienced by older men in the United Kingdom (Auer & Fortuny, 2000).

### **Policy Developments in the United Kingdom**

The United Kingdom’s path to legislation has been somewhat different than that of the United States. Much discussion of retirement, age discrimination, and extending working lives had occurred in the 1950s, but age did not form part of the United Kingdom’s antidiscrimination legislation in the 1960s and 1970s. It was only in the 1990s that interest began to intensify—coinciding, significantly, with older people’s rising employment rates and the emergence of a macroeconomic strategy of expanding labor supply. Initially, the approach of the New Labour government (1997–2010) was voluntaristic, via good-practice advice to employers, but the United Kingdom was forced into legislation in 2000 by the European Union Directive on Equal Treatment. From October 1, 2006, the Employment Equality (Age) Regulations have applied, with a default retirement age of 65 (now uncapped)—unless objectively justified by criteria of productivity—and proportionate, mandatory retirement has been abolished.

In years to come, much will be decided (as in the United States after 1967) by legal judgments and case law. The likely impact of these measures in the United Kingdom is thus conjectural, but their effect in encouraging later-life working may be limited. Contrary to prevailing myth, only a minority of older workers retire early because they have been offered a generous early-exit incentive via a final-salary occupational pension scheme. Those who leave work earliest in late middle age tend to be the least skilled, blue-collar workers whose exit from the labor force is involuntary and for whom mandatory retirement is an irrelevance. Roughly six out of ten British men have permanently left employment by the age of 65 (the most common age for mandatory retirement). By the time cohorts reach their 60s, other factors (such as caring responsibilities, diminished health, or burnout) render

many unable to remain in employment (Macnicol, 2008). Legislation cannot much affect this situation, although more enlightened age-management policies in the workplace would undoubtedly help.

The ambiguities of anti-ageism are evident in the fact that these seemingly progressive measures against age discrimination, ostensibly enhancing the rights of older people, have been accompanied by proposals to raise state pension ages—to 66 by October 2020 and to 67 by 2028. As in the United States, the consensus now is that the state pension age will rise even further, in line with future gains in life expectancy. A new principle has been enunciated: that citizens will have, on average, a strictly fixed time in state-funded retirement. The ostensible justification—that a future ageing population renders this change inevitable—is, in the view of this author, highly suspect. In the United Kingdom, life expectancy at age 65 is currently rising by only 0.8 percent per annum for men and 0.6 percent per annum for women; the problem of the large baby boom cohorts moving into retirement will diminish after the year 2050; and even in the third decade of this century, by the time the alleged demographic crisis has occurred, 22 percent of the UK population will be age 65-plus—a situation very close to what currently pertains in Japan, Sweden, and Germany (none of which are experiencing economic catastrophe).

### Conclusion

Anti-ageism has enormous potential to enhance the rights of older people and improve their lives by removing an aspect of social and economic discrimination that is arguably more corrosive than racism or sexism, because it tends to be accepted and internalized as normal or inevitable. Anti-ageism has also been part of the goal of creating an ageless society, in which individuals will be judged by the content of their character rather than by their chronological age. However, in both the United States and the United Kingdom, this laudable goal has also been used to justify more intensive labor market activation and a raising of social security (pension) ages, which will create more hardship for jobless people in their late 60s. The justifying logic begins with the contentious proposition that age discrimination has been the major cause of the employment problems of older workers; it then points to the legislative action that both countries have introduced; the final step is to argue that because age discrimination has apparently been abolished, older workers will experience no difficulty remaining in jobs

until they are in their late 60s. An apparent enhancement of employment rights has thus been accompanied by a significant diminution of welfare rights. In short, anti-ageism has proved to be something of a double-edged sword.

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Especially invidious in their analysis is the “stereotype threat” in which societal-based negative attitudes toward older people become internalized or “relevant to the self” of older people. Abrams and Swift would prefer that age be treated more as a “continuous attribute” and not confound age with particular rights and needs. Yet, they acknowledge that certain pension, housing, and health provisions may be based on and reinforce age divisions.

Tay McNamara and John Williamson tackle this latter dilemma by asking “is age discrimination ever acceptable?” They identify both age discrimination and “reverse age discrimination,” where it is younger people who might be being disadvantaged. They identify examples of possible “acceptable institutional ageism” in which it is acceptable to treat people of different ages differently. In the case of the United States, they suggest that age-based discrimination, at least on the margins, may be more acceptable than discrimination based on either race or gender. To this point, they posit five policy examples: mandatory retirement in certain specified occupations (e.g., firefighters), senior citizen discounts, age-restricted communities, more frequent testing of older drivers, and lower positioning of older people on organ transplant waiting lists. For better or worse, age is “different”: in some cases this may be tied to public safety; yet, in others differential treatment may be tied to a belief that entitlement to certain public benefits should be based at least in part on age. A priori, age neutrality may seem eminently desirable, but there are widely recognized instances where “age-related differential treatment” may be deemed acceptable.

Bill Bytheway turns attention to employment-based discrimination in the United Kingdom, noting that after a century of “nonnegotiable universal policy of retirement at prespecified ages,” equality and human rights concerns have transformed the mandatory retirement issue. Yet, a worker’s age will inevitably be a “complication” at some point, necessitating the question of what really is discriminatory about age-related retirement policies. The answer lies in how retirement policies are agreed to and implemented, a thorny legal patch that the British system is still working through, trying to balance the interests of employers and younger people as well as those of older ones.

Luke Franz and Joanna Lahey broaden the perspective to explore recent European initiatives against employment discrimination based on age. The European Union Council Directive of 2000 required EU member countries to design their own age discrimination laws by 2006, with the resulting national laws being in an ongoing state of flux. In many of the European countries, including the United Kingdom, factors beyond bona fide occupational qualifications may come into play, factors that provide less blanket protections to older workers than has been largely the case in the United States. Thus, the “legitimate aim” in the United States is tied directly to

the job, whereas in the United Kingdom other legitimate aims of policy can include business issues—but only where related to explicit social policy aims. The authors adopt a cautionary tone on the matter of the degree to which European retirement policy may approach that of the United States. They speak to cultural and institutional issues around whether people in different countries in fact want to work longer. Nor do they accept the conventional wisdom that retiring an older worker automatically creates a job for a younger worker (what is known as the “lump of labor” fallacy). As well, they make the critical point that employment discrimination laws may protect older workers who are currently employed, but that those same laws appear to have clear negative consequences for older individuals seeking work.

Finally, John Macnicol places age discrimination in employment legislation in a broader economic context, suggesting that structural issues and labor market demand may trump discrimination as underlying factors behind older worker unemployment. According to Macnicol, labor force trends of the past few decades make clear that deindustrialization, regional variations, and other macro-economic forces play a more central role than an employer’s putative prejudices against older workers. After reviewing the U.S. experience with a series of amendments to the Age Discrimination in Employment Act—which dramatically curtailed mandatory retirement in 1986—the author suggests that the more recent legislative path in Great Britain will be less certain due to the legitimacy of other employer and social concerns. Finally, while acknowledging the “enormous” potential of anti-ageism initiatives to enhance the rights of older people and to move toward a goal of creating a so-called ageless society, Macnicol highlights how contemporary economic and demographic realities are putting an unexpected twist on this seemingly laudable goal, viz., if age discrimination has apparently been abolished, older workers should experience no difficulty in working into their late 60s or beyond, *ceteris paribus*. In Macnicol’s words: “An apparent enhancement of employment rights has thus been accompanied by a significant diminution of welfare rights. In short, anti-ageism has proved to be something of a double-edged sword.”

These papers are not only valuable in themselves but also direct our attention to a number of vital policy issues. There is a complex balance to be achieved between rooting out paternalistic prejudice in public and private services while maintaining age-related differential treatment where aging confers vulnerability. There are also serious questions in relation to extending working lives and the economic contribution of older people who are on the one hand marginalized in the workplace and on the other portrayed as a burden on society—and all too often on employers as well. These are weighty concerns that pose a series of dilemmas for policymaking and service delivery.



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[www.ageuk.org.uk/professional-resources-home](http://www.ageuk.org.uk/professional-resources-home)

