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Introduction - Introduction

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INTRODUCTION

HOWARD EGLIT* AND BERNICE NEUGARTEN**

Age distinctions pervade our society. They are commonly employed in statutes and regulations as criteria for the distribution of public resources and for the imposition or relaxation of legal responsibilities. They are utilized in a less formal, but no less substantively significant, sense as mechanisms to reflect normative values about the proper roles and rights of individuals, whether the individual is a dependent infant or a fully-empowered adult or a frail older person.

In many instances, the use of age distinctions is undoubtedly appropriate. In numerous settings they serve as convenient devices to avoid costly, individualized assessments in determining which persons should be the subjects or beneficiaries of large and complicated bureaucratic systems.

Increasingly, however, we are coming to realize that sometimes age distinctions exact tolls which may be unacceptable in terms of fairness and equality. The evolving status of mandatory retirement is perhaps the most obvious example of changing perceptions. In 1967 Congress, by passage of the Age Discrimination in Employment Act,¹ effectively signaled that age-based involuntary retirement prior to age 65 was no longer appropriate, although it did not entirely bar the practice. In 1978 Congress amended the statute to raise the Act's coverage to age 70,² thereby again sending a message about the unacceptable use of age as a determinant in job termination. At the same time, Congress totally abolished any acceptable age ceiling regarding most federal employees³—the harbinger, perhaps, of the next step in the legislative process regarding all workers. Obviously, this progression shows a changing perception of the appropriateness of age as a basis for making

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1. 29 U.S.C. §§ 621-634 (1976) (amended 1978).

2. Age Discrimination in Employment Act Amendments of 1978, Pub. L. No. 95-256, § 3(a), 92 Stat. 189 (amending 29 U.S.C. § 631 (1976)).

3. *Id.* § 5(a), (e), 92 Stat. 191 (amending 29 U.S.C. § 633a (1976)).

employment decisions. The formerly acceptable practice of utilizing an age distinction is being gradually converted into condemnable age discrimination.

In other settings, also, our laws increasingly reflect the view that some uses of age are discriminatory in a negative and therefore intolerable sense. Federal statutes address age discrimination, for example, in the credit context,⁴ in the distribution of federal revenue sharing funds,⁵ and in the extension of disaster relief assistance.⁶ Potentially, the most significant enactment is the Age Discrimination Act of 1975,⁷ which, subject to several statutorily-established exceptions, prohibits discrimination on the basis of age by any recipient of federal financial assistance.

In an effort to explore the parameters of age discrimination in general and the Age Discrimination Act in particular, the National Conference on Constitutional and Legal Issues Relating to Age Discrimination and the Age Discrimination Act was convened at the Chicago Kent College of Law on May 7-8, 1981. Funded by the Department of Health and Human Services' Administration on Aging, this conference brought together individuals from the field of law and from the social sciences for the purpose of encouraging an interchange of perspectives and expertise.

Several papers were prepared for the conference.⁸ These have been reproduced in this symposium publication, which is being distributed to, among others, the delegates to the 1981 White House Conference on Aging. We regard this publication as a signal event. It provides a careful examination of what is, in many regards, a very troubled and troubling exercise in dealing with age discrimination, *i.e.*, the Age Discrimination Act. More generally, it provides a well-rounded examination of age discrimination as a phenomenon of our society. And finally, this symposium issue of the law review marks, in tangible form, what is becoming an emerging discipline, *i.e.*, age and the law. We hope this publication will serve to stimulate a continuing

4. *See, e.g.*, Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (1976 & Supp. 3).

5. *See, e.g.*, State and Local Fiscal Assistance Act of 1972, 31 U.S.C. § 1242(a)(1) (1976 & Supp. 3).

6. *See, e.g.*, Disaster Relief Act of 1974, 42 U.S.C. §§ 5151, 5174 (1976).

7. 42 U.S.C. §§ 6101-6107 (1976), *as amended by* Comprehensive Older Americans Act Amendments of 1978, Pub. L. No. 95-478, § 401, 92 Stat. 1513.

8. Prof. Martin Levine subsequently prepared a paper for this symposium issue which was not presented at the conference.

dialogue between lawyers and social scientists and will help to increase public understanding of the complexities of age discrimination.***

*** An annotated bibliography (some 200 titles) on Age and the Law can be obtained from Bernice L. Neugarten, School of Education, Northwestern University, Evanston, Illinois (60201). The bibliography focuses on concepts and findings from the social sciences regarding age differences and age distinctions. Illustrative legal cases are included. Enclose \$3.00 per copy to cover costs of duplication and mailing.

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