

Chapter 1

Introduction to Just a Number

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notes

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

References

- Cassin, René (1969), *From the Ten Commandments to the Rights of Man*, France.
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